

THE
CODE OF CRIMINAL PROCEDURE,
BEING
ACT V. OF 1898,
AS AMENDED UP TO JULY, 1911,

BY
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THE CRIMINAL PROCEDURE CODE (ACT V. OF 18)

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THE
CODE OF CRIMINAL PROCEDURE, 1898,
BEING
ACT NO. V. OF 1898.*

RECEIVED THE G.-G.'S ASSENT ON THE 22ND MARCH 1898.

An Act to consolidate and amend the Law relating to Criminal Procedure.

WHEREAS it is expedient to consolidate and amend the law relating to criminal procedure; It is hereby enacted as follows:—

* For Statement of Objects and Reasons, see *Gazette of India*, 1897, Pt. V., p. 363; for Report of the Select Committee, see *ibid*, 1898, Pt. V., p. 19; and for Proceedings in Council, see *ibid*, 1897, Pt. VI., pp. 238 and 254, and *ibid* 1898, pp. 22, 101, and 175.

Act V. of 1898 has been declared, under section 3 of the Santhal Parganas Settlement Regulation (III. of 1872) as amended by the Santhal Parganas Justice and Laws Regulation (III. of 1899), to be in force (with modifications) in the Santhal Parganas.—See *Calcutta Gazette*, 1898, Pt. I., p. 665.

It has been extended, under s. 5 of the Angul District Regulation (I. of 1894), to the District of Angul with effect from the 1st August 1898.—See *Calcutta Gazette*, 1898, Pt. I., p. 779.

It has been declared in force in Upper Burma except the Shan States, by the Burma Laws Act (XIII. of 1898).

It has been declared in force in the Chittagong Hill Tracts (with a reservation as to cases tried by certain persons) by s. 4 of the Chittagong Hill Tracts Regulation (I. of 1900).

It has ceased to be in force, by notification under s. 2 of the Assam Frontier Tracts Regulation (II. of 1880), in the following places, namely:—

The Garo Hills, the Khasi and Jaintia Hills, the Naga Hills, the North Cachar Sub-division of the Cachar District, the Mikir Hill-tracts in the Nowgong District, the Dibrugarh Frontier Tract in the Lakhimpur District and the Lushai Hills.—See *Assam Gazette*, 1898 Pt. II., p. 788.

It has been declared in force, by notification under s. 3 (a) of the Scheduled Districts Act (XIV. 1874) in the Scheduled Districts in Ganjam and Vizagapatam, see *Fort St. George Gazette*, 1898, Pt. I., p. 306, and *Gazette of India* 1898, Pt. I. p. 869; and by notification under the same section and section 5A in the following other Scheduled Districts, namely:—

The Districts of Hazaribagh; Lohardaga (now the Ranchi District, see *Calcutta Gazette*, 1899, Pt. I., p. 44), Manbhum, and Palamau, and in Pargana Dhalbhum and the Kolhan in the Singbhum District.—See *Calcutta Gazette* 1898, Pt. I., p. 714 and *Gazette of India*, 1899, Pt. I., p. 779; and in the Pargana of Manpur see *Gazette of India*, 1899, Pt. I., p. 419.

PART I.—PRELIMINARY.

CHAPTER I.

1. (1) This Act may be called the Code of Criminal Procedure, 1898; and it shall come into force on the first day of July, 1898.

Short title.
Commencement.

(2) It extends to the whole of British India; but, in the absence of any specific provision to the contrary, nothing herein contained shall affect any special or local law now in force, or any special jurisdiction or power* conferred, or any special form of procedure prescribed, by any other law† for the time being in force, or shall apply to—

Extent.

(a) the Commissioners of Police in the towns of Calcutta, Madras, and Bombay, or the Police in the towns of Calcutta and Bombay;‡

(b) heads of villages in the Presidency of Fort St. George;§
or

(c) village police officers in the Presidency of Bombay:¶

It has been extended, by notification under sections 5 and 5A of Act XIV. of 1874 to British Baluchistan.—See *Gazette of India*, 1898, Pt. II., p. 221.

It was extended to the Shan States, by the Shan States Laws and Criminal Justice Order, 1895, as amended by notification No. 29 dated 19th December 1898.

Certain portions of the Code have been declared by notification under s. 3 (2) of the Cochin Hill Tribes Regulation (I. of 1895), to be applicable to members of a hill-tribe in a hill-tract; and, under s. 3 (2) of the Chin Hills Regulation (V. of 1896), certain portions have been declared to be applicable to Chins in the Chin Hills.—See *Burma Gazette*, 1898, Pt. I., p. 322.

* For power to exempt the Judicial Commissioner of Lower Burma and the Recorder of Rangoon, or the Special Court in Burma, from the operation of such parts of the Code as relate to the mode of recording judgments, orders, and sentences, and of taking down the evidence of witnesses, see the Lower Burma Courts Act (XI. of 1889), s. 92 (2).

As to power of Governor-General in Council to make rules conferring powers of original criminal jurisdiction on Indian Marine Courts, see the Indian Marine Courts Act (XIV. of 1887), s. 70 (2).

† See for example the Indian Articles of War (Act V. of 1869).

‡ As to Calcutta, see the Calcutta Police Act (Ben. Act IV. of 1866); as to Madras, see the Madras City Police Act (Mad. Act III. of 1888); as to Bombay, see Act XIII. of 1856, Act XLVIII. of 1860, as amended by Bom. Act IV. of 1882.

§ See Mad. Reg. XI. of 1816 and Mad. Reg. IV. of 1821.

¶ See the Bombay Village Police Act (Bom. Act VIII. of 1867).

Provided that the Local Government may, if it thinks fit, with the sanction of the Governor-General in Council, by notification in the official Gazette, extend any of the provisions of this Code, with any necessary modifications, to such excepted persons.

2. (1) On and from the first day of July 1898, the enactments mentioned in the first schedule shall be repealed to the extent specified in the fourth column thereof but not so as to restore any Jurisdiction or form of procedure not then existing or followed, or to render unlawful the continuance of any confinement which was then lawful.

Repeal of enactments. (2) All notifications published, proclamations issued, powers conferred, forms prescribed, local limits defined, sentences passed, and orders, rules, and appointments made under any enactment hereby repealed, or under any enactment repealed by any such enactment, and which are in force immediately before the first day of July 1898, shall be deemed to have been respectively published, issued, conferred, prescribed, defined, passed, and made under the corresponding section of this Code.

(3) The provisions of this Code shall apply to all proceedings instituted after the commencement of this Code, and, so far as may be, to all cases pending in any Criminal Court when this Code comes into force.

3. (1) In every enactment passed before this Code comes into force, in which reference is made to, or to any chapter or section of, the Code of Criminal Procedure, Act XXV. of 1861, or Act X. of 1872, or Act X. of 1882, or to any other enactment hereby repealed, such reference shall, so far as may be practicable, be taken to be made to this Code, or to its corresponding chapter or section.

(2) In every enactment passed before this Code comes into force, the expressions, "Officer exercising (or 'having') the powers (or 'the full powers') of a Magistrate," "Subordinate Magistrate, first class," and "Subordinate Magistrate, second class," shall respectively be deemed to mean "Magistrate of the first class," "Magistrate of the second class," and "Magistrate of the third class;" the expression "Magistrate of a division of a district" shall be deemed to mean "Sub-divisional Magistrate;" the expression "Magistrate of the

district " shall be deemed to mean " District Magistrate ; " the expression " Magistrate of Police " shall be deemed to mean " Presidency Magistrate," and the expression " Joint Sessions Judge " shall mean " Additional Sessions Judge."

4. (1) In this Code the following words and expressions have the following meanings unless a different intention appears from the subject or context :—

Definitions.

- (a) " Advocate-General " includes also a Government Advocate, or, where there is no Advocate-General or Government Advocate, such officer as the Local Government may, from time to time, appoint in this behalf :
- (b) " bailable offence " means an offence shown as bailable in the second schedule, or which is made bailable by any other law for the time being in force; and " non-bailable offence " means any other offence :
- (c) " charge " includes any head of charge when the charge contains more heads than one :
- (d) " Chief Justice " includes also the Chief Judge of the Chief Court of the Punjab and the [Chief or Senior Judge of the Chief Court of Lower Burma] :*
- (e) " Clerk of the Crown " includes any officer specially appointed by the Chief Justice to discharge the functions given by this Code to the Clerk of the Crown :
- (f) " cognizable offence " means an offence for, and " cognizable case " means a case in, which a police-officer, within or without the presidency-towns, may, in accordance with the second schedule, or under any law for the time being in force, arrest without warrant :
- (g) " Commissioner of Police " includes a Deputy Commissioner of Police :
- (h) " complaint " means the allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but it does not include the report of a police-officer :

* These words in square brackets have been substituted for the words " Recorder of Rangoon " by the Lower Burma Courts Act (VI. of 1900).— See s. 47 and the 1st Schedule of that Act.

(i) "European British subject" means—

(i) any subject of Her Majesty born, naturalized, or domiciled in the United Kingdom of Great Britain and Ireland, or in any of the European, American, or Australian Colonies or Possessions of Her Majesty, or in the Colony of New Zealand, or in the Colony of the Cape of Good Hope or Natal;

ii) any child or grandchild of any such person by legitimate descent:

(j) "High Court"* means, in reference to proceedings against European British subjects or persons jointly charged with European British subjects,† the High Courts of judicature at Fort William, Madras, and Bombay, the High Court of Judicature for the North-Western Provinces, the Chief Court of the Punjab, and the [Chief Court of Lower Burma]:‡ in other cases "High Court" means the highest Court of criminal appeal or revision for any local area, or, where no such Court is established under any law for the time being in force, such officer as the Governor-General in Council may appoint in this behalf:

(k) "inquiry" includes every inquiry other than a trial conducted under this Code by a Magistrate or Court:

(l) "investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police-officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf:

(m) "judicial proceeding"§ includes any proceeding in the course of which evidence is or may be legally taken on oath:

* For meaning of "High Court" in (1) Upper Burma, *see* the Upper Burma Criminal Justice Regulation (V. of 1892), Sch., s. 1; (2) in the Santhal Parganas, *see* the Santhal Parganas Justice Regulation (V. of 1893), s. 4, as amended by the Santhal Parganas Justice and Laws Regulation (III. of 1899). *See* also another definition at s. 266, *infra*.

† *See* Ch. XXIII., *infra*.

‡ The words in square brackets have been substituted by the Lower Burma Courts Act (VI. of 1900), s. 47, Sch. I., for the words "Court of the Recorder of Rangoon."

§ *Cf.* the Indian Penal Code (Act XLV. of 1860), s. 193, *Explanation 1*.

(n) "non-cognizable offence" means an offence for, and "non-cognizable case" means a case in, which a police-officer, within or without a presidency-town, may not arrest without warrant :

(o) "offence" means any act or omission made punishable by any law for the time being in force ;

it also includes any act in respect of which a complaint may be made under section 20 of the Cattle Trespass Act, 1871*:

(p) "officer in charge of a police-station"† includes, when the officer in charge of the police-station is absent from the station-house, or unable from illness or other cause to perform his duties, the police-officer present at the station-house who is next in rank to such officer and is above the rank of constable or, when the Local Government so directs, any other police-officer so present :

(q) "place" includes also a house, building, tent, and vessel :

(r) "pleader," used with reference to any proceeding in any Court, means a pleader authorized under any law‡ for the time being in force to practise in such Court, and includes (1) an advocate, a vakil, and an attorney of a High Court so authorized, and (2) any mukhtar or other person appointed with the permission of the Court to act in such proceeding :

(s) "police-station" means any post or place declared, generally or specially, by the Local Government to be a police-station, and includes any local area specified by the Local Government in this behalf :

(t) "Public Prosecutor" means any person appointed under section 492, and includes any person acting under the directions of a Public Prosecutor, and any person conducting a prosecution on behalf of Her Majesty in any High Court in the exercise of its original criminal jurisdiction :

* Act I. of 1871.

† Cf. the Upper Burma Criminal Justice Regulation (V. of 1892), Sch., ss. 6 and 7.

‡ See the Legal Practitioners Act (I. of 1846) ; the Legal Practitioners Act (XX. of 1853) ; the Legal Practitioners Act (XVIII. of 1879) ; the Legal Practitioners Act (IX. of 1884).

- (u) "sub-division" means sub-division of a district :*
- (v) "summons-case" means a case relating to an offence, and not being a warrant-case ; and
- (w) "warrant-case" means a case relating to an offence punishable with death, transportation, or imprisonment for a term exceeding six months.

Words referring to acts. (2) Words which refer to acts done extend also to illegal omissions ; and

all words and expressions used herein, and defined in the Indian Penal Code,† and not hereinbefore defined, shall be deemed to have the meanings respectively attributed to them by that Code.†

5. (1) All offences under the Indian Penal Code† shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying, or otherwise dealing with such offences.

* See s. 8, *infra*.

† Act XLV. of 1860.

PART II.—CONSTITUTION AND POWERS OF CRIMINAL COURTS AND OFFICES.

CHAPTER II.—OF THE CONSTITUTION OF CRIMINAL COURTS AND OFFICES.

*A.—Classes of Criminal Courts.**

6. Besides the High Courts and the Courts constituted under any law other than this Code for the time being in force, there shall be five classes of Criminal Courts in British India, namely :—

- I.—Courts of Session :
- II.—Presidency Magistrates :
- III.—Magistrates of the first class :
- IV.—Magistrates of the second class :
- V.—Magistrates of the third class.

B.—Territorial Divisions.†

7. (1) Every province (excluding the presidency-towns) shall be a sessions division, or shall consist of sessions divisions ; and every sessions division shall, for the purposes of this Code, be a district, or consist of districts.

(2) The Local Government may alter the limits, or, with the previous sanction of the Governor-General in Council, the number, of such divisions and districts.

(3) The sessions divisions and districts existing when this Code comes into force shall be sessions divisions and districts respectively unless and until they are so altered.

* In places where the Punjab Frontier Crimes Regulation is in force, cases may be tried by a Council of Elders.—See the Punjab Frontier Crimes Regulation (IV. of 1887), s. 13 (1), see also s. 15 of the same Regulation for executing sentences passed on the finding of Council of Elders. For trial of second trial before any of these Courts, see same Regulation, s. 17 (3).

† As to Courts of Session in Upper Burma, see the Upper Burma Criminal Justice Regulation (V. of 1892), Sch., s. II.

Presidency-towns to be deemed districts. (4) Every presidency-town shall, for the purposes of this Code, be deemed to be a district.

8. (1) The Local Government may divide any district outside the presidency-towns into sub-divisions. Power to divide districts into sub-divisions. or make any portion of any such district a sub-division, and may alter the limits of any sub-division.

(2) All existing sub-divisions which are now usually put under the charge of a Magistrate shall be deemed to have been made under this Code. Existing sub-divisions maintained.

C.—Courts and Offices outside the Presidency-towns.

9. (1) The Local Government shall establish a Court of Session for every sessions division, and appoint a Judge of such Court. Court of Session.

(2) The Local Government may, by general or special order in the official Gazette, direct at what place or places the Court of Session shall hold its sitting; but, until such order be made, the Courts of Session shall hold their sittings as heretofore.

(3) The Local Government may also appoint Additional Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in one or more such Courts.

(4) A Sessions Judge of one sessions division may be appointed by the Local Government to be also an Additional Sessions Judge of another division, and in such case he may sit for the disposal of cases at such place or places in either division at the Local Government may direct.

(5) All Courts of Session existing when this Code comes into force shall be deemed to have been established under this Act.

10. (1) In every district outside the presidency-towns, the Local Government shall appoint a Magistrate of the first class, who shall be called the District Magistrate. District Magistrate.

(2) The Local Government may appoint any Magistrate of the first class to be an Additional District Magistrate for a period not exceeding six months, and such Additional District Magistrate shall have all or any of the powers of a District Magistrate under this Code as the Local Government may direct.

11. Whenever, in consequence of the office of a District Magistrate becoming vacant, any officer succeeds temporarily to the chief executive administration of the district, such officer shall, pending the order of the Local Government, exercise all the powers and perform all the duties respectively conferred and imposed by this Code on the District Magistrate.

12. (1) The Local Government may appoint as many persons as it thinks fit, besides the District Magistrate, to be Magistrates of the first, second, or third class in any district outside the presidency-towns; and the Local Government, or the District Magistrate subject to the control of the Local Government, may, from time to time, define local areas within which such persons may exercise all or any of the powers with which they may respectively be invested under this Code.

(2) Except as otherwise provided by such definition, the jurisdiction and powers of such persons shall extend throughout such district.

13. (1) The Local Government may place any Magistrate of the first or second class in charge of a sub-division, and relieve him of the charge as occasion requires.

(2) Such Magistrates shall be called Sub-divisional Magistrates.

(3) The Local Government may delegate its powers under this section to the District magistrate.

14. (1) The Local Government may confer upon any person all or any of the powers conferred or conferrable by or under this Code on a Magistrate of the first, second, or third class in respect to particular cases or to a particular class or particular classes of cases, or in regard to cases generally, in any local area outside the presidency-towns.

(2) Such Magistrates shall be called Special Magistrates, and shall be appointed for such term as the Local Government may by general or special order direct.

(3) With the previous sanction of the Governor-General in Council, the Local Government may delegate, with such limitations

as it thinks fit, to any officer under its control, the power conferred by sub-section (1).

(4) No powers shall be conferred under this section on any police-officer below the grade of Assistant District Superintendent, and no powers shall be conferred on a police-officer except so far as may be necessary for preserving the peace, preventing crime, and detecting, apprehending, and detaining offenders in order to their being brought before a Magistrate, and for the performance by the officer of any other duties imposed upon him by any law for the time being in force.*

15. (1) The Local Government may district any two or more Benches of Magistrates. Magistrates in any place outside the presidency-towns to sit together as a bench, and may by order invest such Bench with any of the powers conferred or conferrable by or under this Code on a Magistrate of the first, second, or third class, and direct it to exercise such powers in such cases, or such classes, of cases only, and within such local limits, as the Local Government thinks fit.

(2) Except as otherwise provided by any order under this section, every such Bench shall have the Powers exercisable by Bench in absence of special direction. Magistrate of the highest class to which any one of its members, who is present taking part in the proceedings as a member of the Bench, belongs, and, as far as practicable, shall, for the purposes of this Code, be deemed to be a Magistrate of such class.

16. The Local Government may, or, subject to the control of Power to frame rules for the Local Government, the District Magistrate may, from time to time, make rules consistent with this Code for the guidance of Magistrates' Benches in any district respecting the following subjects:—

- (a) the classes of cases to be tried;
- (b) the times and places of sitting;

* Notwithstanding anything contained in s. 14, any police-officer in Assam, not below the grade of Assistant District Superintendent, may be invested with all or any of the powers conferred or conferrable on a Magistrate of the first, second, or third class in respect to non-cognizable cases.—See the Assam Police-officers Regulation (II. of 1888), s. 4.

As to conferment of Magisterial powers on police-officers in Upper Burma, see the Upper Burma Criminal Justice Regulation (V. of 1892), Sch., s. III.; in the Salween and Arakan Districts, see the Burma Laws Act (XIII. of 1896), s. 9.

- (c) the constitution of the Bench for conducting trials ;
- (d) the mode of settling differences of opinion which may arise between the Magistrates in session.

17. (1) All Magistrates appointed under sections 12, 13, and 14, and all Benches constituted under section 15, shall be subordinate to the District Magistrate, and he may, from time to time, make rules or give special orders consistent with this Code as to the distribution of business among such Magistrates and Benches ; and

(2) every Magistrate (other than a Sub-divisional Magistrate) and every Bench exercising powers in a sub-division shall also be subordinate to the Sub-divisional Magistrate, subject, however, to the general control of the District Magistrate.

(3) All Assistant Sessions Judges shall be subordinate to the Sessions Judge in whose Court they exercise jurisdiction, and he may, from time to time, make rules consistent with this Code as to the distribution of business among such Assistant Sessions Judges.

(4) The Sessions Judge may also, when he himself is unavoidably absent or incapable of acting, make provision for the disposal of any urgent application by an Additional or Assistant Sessions Judge or, if there be no Additional or Assistant Judge, by the District Magistrate, and such Judge or Magistrate shall have jurisdiction to deal with any such application.

(5) Neither the District Magistrate nor the Magistrates or Benches appointed or constituted under sections 12, 13, 14, and 15 shall be subordinate to the Sessions Judge except to the extent and in the manner hereinafter expressly provided.

D.—Courts of Presidency Magistrates.

18. (1) The Local Government shall, from time to time appoint a sufficient number of persons (hereinafter called Presidency Magistrates) to be Magistrates for each of the presidency-towns, and shall appoint one of such persons to be Chief Presidency Magistrate for each such town.

(2) The powers of a Presidency Magistrate under this Code shall be exercised by the Chief Presidency Magistrate, or by a salaried Presidency Magistrate, or by any other Presidency Magistrate empowered by the Local Government to sit singly, or by any Bench of Presidency Magistrates.

19. Any two or more of such persons may (subject to the rules made by the Chief Presidency Magistrate under the power hereinafter conferred) sit together as a Bench.

20. Every Presidency Magistrate shall exercise jurisdiction in all places within the presidency-town for which he is appointed, and within the limits of the port of such town and of any navigable river or channel leading thereto, as such limits are defined under the law* for the time being in force for the regulation of ports and port-dues.

21. (1) Every Chief Presidency Magistrate shall exercise within the local limits of his jurisdiction all the powers conferred on him by this Code or which, by any law or rule in force immediately before this Code comes into force, are required to be exercised by any Senior of Chief Presidency Magistrate, and may, from time to time, with the previous sanction of the Local Government, make rules consistent with this Code to regulate—

- (a) the conduct and distribution of business and the practice in the Courts of the Magistrates of the town ;
- (b) the times and places at which Benches of Magistrate shall sit ;
- (c) the constitution of such Benches ;
- (d) the mode of settling differences of opinion which may arise between Magistrates in session ; and
- (e) any other matter which could be dealt with by a District Magistrate under his general powers of control over the Magistrates subordinate to him.

(2) The Local Government may, for the purposes of this Code, declare what Presidency Magistrates are Subordinate to the Chief Presidency Magistrate, and may define the extent of their subordination.

See the Indian Ports Act (X. of 1889).

Cr. P. C. (1898).—3.

E.—Justices of the Peace.

22. The Governor-General in Council, so far as regards the Justices of the Peace for whole or any part of British India outside the Mufassal. the presidency-towns,

and every Local Government, so far as regards the territories subject to its administration (other than the towns aforesaid),

may, by notification in the official Gazette, appoint such European British subjects as he or it thinks fit to be Justices of the Peace within and for the territories mentioned in such notification.

23. The Local Government, so far as regards the towns of Calcutta, Madras, and Bombay, may, by notification in the official Gazette, appoint to be Justices of the Peace within the limits of the town mentioned in such notification any persons resident within British India, and not being the subjects of any foreign state, whom the Local Government thinks fit.

24 (1) Every person now acting as a Justice of the Peace within and for any part of British India other than the said towns, under any commission issued by a High Court, shall be deemed to have been appointed under section 22 by the Governor-General in Council to act as a Justice of the Peace for the whole of British India other than the said towns.

(2) Every person now acting as a Justice of the Peace within the limits of any of the said towns under any such commission shall be deemed to have been appointed under section 23 by the Local Government.

25.* In virtue of their respective offices, the Governor-General, Governors, Lieutenant-Governors, and Chief Commissioners, the Ordinary Members of the Council of the Governor-General, "and the Judges of the High Courts"† are Justices of the Peace within and for the whole of British India; Session Judges and District Magistrates are Justices of the Peace within and for the whole of the territories administered by the Local Government

* Cf. The East India Company Act, 1772 (13 Geo. III., Ch. 63), s. 38.

† The words quoted have been substituted by the Lower Burma Courts Act (VI. of 1900), s. 47, and Sch. I., for the words "the Judges of the High Courts and the Recorder of Rangoon."

under which they are serving; and the Presidency Magistrates are Justices of the Peace within and for the towns of which they are respectively Magistrates.

F.—Suspension and Removal.

26. All Judges of Criminal Courts other than the High Courts established by Royal Charter and all Magistrates may be suspended or removed from office by the Local Government :

Provided that such Judges and Magistrates as now are liable to be suspended or removed from office by the Governor-General in Council only shall not be suspended or removed from office by any other authority.

27. The Governor-General in Council may suspend or remove from office any Justice of the Peace appointed by him, and the Local Government may suspend or remove from office any Justice of the Peace appointed by it.

CHAPTER III.—POWERS OF COURTS.

A.—Description of Offences cognisable by each Court.

28. Subject to the other provisions of this Code,* any offence under the Indian Penal Code† may be tried—

- (a) by the High Court, or
- (b) by the Court of Session, or .
- (c) by any other Court by which such offence is shown in the eighth column of the second Schedule to be triable.

Illustration.

A is committed to the Sessions Court on a charge of culpable homicide : He may be convicted of voluntarily causing hurt, an offence triable by a magistrate.

* B. g., ss. 193 and 194, *infra*.

† Act XLV. of 1860.

29. (1) Subject to the provisions of section 447, any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court.

(2) When no Court is so mentioned, it may be tried by the High Court or by any Court constituted under this Code by which such offence is shown in the eighth column of the second Schedule to be triable.

30. In the territories respectively administered by the Lieutenant-Governors of the Punjab and Burma and the Chief Commissioners of Oudh, the Central Provinces, Coorg, and Assam, in Sind, and in those parts of the other Provinces in which there are Deputy Commissioners or Assistant Commissioners, the Local Government may,* notwithstanding anything contained in section 29, invest the District Magistrate or any Magistrate of the first class with power to try as a Magistrate all offences not punishable with death.

B.—Sentences which may be passed by Courts of various Classes.

Sentences which High Courts and Sessions Judges may pass.

31. (1) A High Court may pass any sentence authorized by law.

(2) A Sessions Judge or Additional Sessions Judge may pass any sentence authorized by law; but any sentence of death passed by any such Judge shall be subject to confirmation by the High Court.†

(3) An Assistant Sessions Judge may pass any sentence authorized by law, except a sentence of death or of transportation for a term exceeding seven years, or of imprisonment for a term exceeding seven years.

Sentences which Magistrates may pass.

32. (1) The Courts of Magistrates may pass the following sentences, namely :—

* For notification investing the Assistant Commissioner of Ajmere, being a District Magistrate, with powers to try as a Magistrate all offences not punishable with death, see the *Gazette of India* 1889, Pt. II., p. 420.

† See s. 374, *infra*.

- (a) Courts of Presidency Magistrates and of Magistrates of the first class: { Imprisonment for a term not exceeding two years, including such solitary confinement as is authorized by law :*
Fine not exceeding one thousand rupees :
Whipping.†
- (b) Courts of Magistrates of the second class: { Imprisonment for a term not exceeding six months, including such solitary confinement as is authorized by law :*
Fine not exceeding two hundred rupees.‡
- (c) Courts of Magistrates of the third class { Imprisonment for a term not exceeding one month :
Fine not exceeding fifty rupees.

(2) The Court of any Magistrate may, pass any lawful sentence, combining any of the sentences which it is authorized by law to pass.

(3) [*Repealed by Act IV. of 1909.*]

33. (1) The Court of any Magistrate may award such term of imprisonment in default of payment of fine as is authorized by law in case of such default :
Power of Magistrates to sentence to imprisonment in default of fine.

Provided that—

(a) the term is not in excess of the Magistrate's powers under this Code :

(b) in any case decided by a Magistrate where imprisonment has been awarded as Proviso as to certain cases. part of the substantive sentence, the period of imprisonment awarded in default of payment of the fine shall not exceed one-fourth of the period of imprisonment which such

* See the Indian Penal Code (Act XLV. of 1860), ss. 73 and 74.

† As to powers of Magistrates in Upper Burma to pass sentences of whipping. see the Upper Burma Criminal Justice Regulation (V. of 1892), Sch. s. IV., 1899.

‡ Here the words, "whipping (if specially empowered)," are repealed by the Whipping Act (IV. of 1909), and have, therefore, been omitted.

Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.

(2) The imprisonment awarded under this section may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate under section 32.

84. The Court of a Magistrate specially empowered under Higher powers of certain section 30 may pass any sentence authorized by law except a sentence of death or of transportation for a term exceeding seven years or imprisonment for a term exceeding seven years.

85. (1) When a person is convicted at one trial of two or more distinct offences, the Court may sentence him, for such offences, to the several punishments prescribed therefor which such Court is competent to inflict : such punishments, when consisting of imprisonment or transportation, to commence the one after the expiration of the other in such order as the Court may direct unless the Court directs that such punishments shall run concurrently.

(2) In the case of consecutive sentences, it shall not be necessary for the Court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court :

Provided as follows :—

(a) In no case shall such person be sentenced to imprisonment for a longer period than fourteen years :
Maximum term of punishment.

(b) If the case is tried by a Magistrate (other than a Magistrate acting under section 34), the aggregate punishment shall not exceed twice the amount of punishment which he is, in the exercise of his ordinary jurisdiction, competent to inflict.

(3) For the purpose of appeal, aggregate sentences passed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence.

Explanation.—Separable offences which come within the provisions of section 71 of the Indian Penal Code* are not distinct offences within the meaning of this section.

Illustration.

A breaks into a house with intent to commit theft, and steals property therein : A has not committed distinct offences.

C.—Ordinary and Additional Powers.

36. All District Magistrates, Sub-divisional Magistrates, and Ordinary powers of Magistrates.† Magistrates of the first, second, and third classes have the powers hereinafter respectively conferred upon them and specified in the third Schedule. Such powers are called their “ordinary powers.”

37. In addition to his ordinary powers, any Sub-divisional Additional powers conferred on Magistrates.† Magistrate or any Magistrate of the first, second, or third class may be invested by the Local Government or the District Magistrate, as the case may be, with any powers specified in the fourth Schedule as powers with which he may be invested by the Local Government or the District Magistrate.

38. The power conferred on the District Magistrate by section Control of District Magistrate's investing power. 37 shall be exercised subject to the control of the Local Government.

D.—Conferment, Continuance, and Cancellation of Powers.

39. (1) In conferring powers under this Code, the Local Government may, by order, empower persons specially by name or in virtue of their office, or classes of officials generally by their official titles. Mode of conferring powers.

(2) Every such order shall take effect from the date on which it is communicated to the person so empowered.

40. Whenever any person holding an office in the service of Government, who has been invested with any powers under this Code throughout any local area, is transferred to an equal or higher office of the Continuance of powers of officers transferred.

* Act XLV. of 1860.

† As to powers of Magistrates in Upper Burma, see the Upper Burma Criminal Justice Regulation (V. of 1892), Sch. 2, V.

same nature, within a like local area under the same Local Government, he shall, unless the Local Government otherwise directs, or has otherwise directed, continue to exercise the same powers in the local area to which he is so transferred.

41. (1) The Local Government may withdraw all or any of the powers conferred under this Code on any person by it, or by any officer subordinate to it.
Powers may be cancelled.

(2) Any powers conferred by the District Magistrate may be withdrawn by the District Magistrate.

PART III.—GENERAL PROVISIONS.

CHAPTER IV.—OF AID AND INFORMATION TO THE MAGISTRATES, THE POLICE, AND PERSONS MAKING ARRESTS.

42. Every person is bound to assist a Magistrate or police-officer reasonably demanding his aid, whether within or without the presidency-towns,—
Public when to assist Magistrates and police.

(a) in the taking or preventing the escape of any other person whom such Magistrate or police-officer is authorized to arrest;

(b) in the prevention or suppression of a breach of the peace, or in the prevention of any injury attempted to be committed to any railway, canal, telegraph, or public property.

43. When a warrant is directed to a person other than a police-officer, any other person may aid in the execution of such warrant if the person to whom the warrant is directed be near at hand and acting in the execution of the warrant.
Aid to person, other than police-officer, executing warrant.

44. (1) Every person, whether within or without the presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under any of the following sections of the Indian Penal Code* (namely), 121, 121A, 122, 123,
Public to give information of certain offences.

* Act XLV. of 1860.

124, 124A, 125, 126, 130, 143, 144, 145, 147, 148, 302, 303, 304, 382, 492, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 456, 457, 458, 459, and 460, shall, in the absence of reasonable excuse, the burden of proving which shall lie upon the person so aware, forthwith give information to the nearest Magistrate or police-officer of such commission or intention.

(2) For the purposes of this section the term "offence" includes any act committed at any place out of British India which would constitute an offence if committed in British India.

45.* (1) Every village-headman, village-accountant, village-watchman, village-police-officer, owner or occupier of land, and the agent of any such owner or occupier, and every officer employed in the collection of revenue or rent of land on the part of Government or the Court of Wards, shall forthwith communicate to the nearest Magistrate, or to the officer in charge of the nearest police-station, whichever is the nearer, any information which he may obtain respecting—

- (a) the permanent or temporary residence of any notorious receiver or vendor of stolen property in any village of which he is headman, accountant, watchman, or police-officer, or in which he owns or occupies land, or is agent, or collects revenue or rent;
- (b) the resort to any place within, or the passage through, such village of any person whom he knows or reasonably suspects to be a thug, robber, escaped convict, or proclaimed offender;
- (c) the commission of, or intention to commit, in or near such village, any non-bailable offence or any offence punishable under section 143, 144, 145, 147, or 148 of the Indian Penal Code;†
- (d) the occurrence, in or near such village, of any sudden or unnatural death, or of any death under suspicious circumstances;

* For section in force in Upper Burma instead of this section, see s. 4 of the Upper Burma Village Regulation (XIV. of 1887).

As to the section in force in those parts of Lower Burma to which the Lower Burma Village Act (III. of 1889) is extended, see s. 5 of that Act.

† Act XLV. of 1860.

(e) the commission of, or intention to commit, at any place out of British India near such village, any act which, if committed in British India, would be an offence punishable under any of the following sections of the Indian Penal Code,* namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459, and 460;

(f) any matter likely to affect the maintenance of order or the prevention of crime or the safety of person or property respecting which the District Magistrate, by general or special order made with the previous sanction of the Local Government, has directed him to communicate information.

(2) In this section—

(i) “village” includes village-lands; and

(ii) the expression “proclaimed offender” includes any person proclaimed as an offender by any Court or authority established or continued by the Governor-General in Council in any part of India in respect of any act which, if committed in British India, would be punishable under any of the following sections of the Indian Penal Code,* namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459, and 460.

(3) Subject to rules in this behalf to be made by the Local Government, the District Magistrate may from time to time appoint one or more persons to be village-headmen for the purposes of this section in any village for which there is no such headman appointed under any other law.

Appointment of village-headmen by District Magistrate in certain cases for purposes of this section.

CHAPTER V.—OF ARREST, ESCAPE, AND RETAKING.

A.—Arrest generally.

46. (1) In making an arrest, the police-officer or other person making the same shall actually touch or confine the body of the person to be arrested unless there be a submission to the custody by word or action.

Arrest how made.

* Act XLV. of 1860.

(2) If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police-officer or other person may use all means necessary to effect the arrest.

(3) Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death, or with transportation for life.*

47. If any person acting under a warrant of arrest, or any person sought to be arrested, has reason to believe that the person to be arrested has entered into, or is within, any place, the person residing in, or being in charge of, such place shall, on demand of such person acting as aforesaid, or such police-officer, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

48. If ingress to such place cannot be obtained under section 47, it shall be lawful in any case for a person acting under a warrant, and, in any case in which a warrant may issue, but cannot be obtained without affording the person to be arrested an opportunity of escape, for a police-officer, to enter such place and search therein, and, in order to effect an entrance into such place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, if, after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance:

Provided that, if any such place is an apartment in the actual occupancy of a woman (not being the person to be arrested), who, according to custom, does not appear in public, such person or police-officer shall, before entering such apartment, give notice to such woman that she is at liberty to withdraw, and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it.

49. Any police-officer or other person authorized to make an arrest may break open any outer or inner door or window of any house or place in order to liberate himself or any other

* As to addition with which s. 46 is to be read in places in which the Punjab Frontier Crimes Regulation (IV. of 1887) is in force, see s. 37 (2) of that Regulation, and s. 3 of this Act, *supra*.

person who, having lawfully entered for the purpose of making an arrest, is detained therein.

50. The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.*
No unnecessary restraint.

51. Whenever a person is arrested by a police-officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail, but the person arrested cannot furnish bail, and

whenever a person is arrested without warrant, or by a private person under a warrant, and cannot legally be admitted to bail, or is unable to furnish bail,

the officer making the arrest, or, when the arrest is made by a private person, the police-officer to whom he makes over the person arrested, may search such person, and place in safe custody all articles, other than necessary wearing apparel, found upon him.†

52. Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman with strict regard to decency.
Mode of searching women.

53. The officer or other person making any arrest under this Code may take from the person arrested, any offensive weapons which he has about his person, and shall deliver all weapons so taken to the Court or officer before which or whom the officer or person making the arrest is required by this Code to produce the person arrested.
Power to seize offensive weapons.

B.—Arrest without Warrant.

54. (1) Any police-officer may, without an order from a Magistrate and without a warrant, arrest—
When police may arrest without warrant.

first—any person who has been concerned in any cognizable offence, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been, so concerned ;

* For penalty for unwarrantable personal violence by a police-officer to a person in his custody, *see* s. 29 of the Police Act (V. of 1861).

† As to disposal of such property, *see* s. 523, *infra*.

secondly—any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house-breaking ;

thirdly—any person who has been proclaimed as an offender, either under this Code, or by order of the Local Government ;

fourthly—any person in whose possession anything is found which may reasonably be suspected to be stolen property, or who may reasonably be suspected of having committed an offence with reference to such thing ;

fifthly—any person who obstructs a police-officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody ;

sixthly—any person reasonably suspected of being a deserter from Her Majesty's Army or Navy, or of belonging to Her Majesty's Indian Marine Service, and being illegally absent from that service ;

seventhly—any person who has been concerned in, or against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of British India, which, if committed in British India, would have been punishable as an offence, and for which he is under any law relating to extradition, or under the Fugitive Offenders Act, 1881,* or otherwise, liable to be apprehended or detained in custody in British India ; and

eighthly†—any released convict committing a breach of any rule made under section 565, sub-section (3).

* Stat. 44 & 45 Vict. c. 69

† For some other cases in which the police may arrest without warrant, see pp. 135 and 136 of Wigley's, "Index of Indian Statutes," Ed. 1897, and the following Acts.—

the Indian Emigration Act (XXI. of 1883), s. 82, see now Act XVII. of 1908 ;

the Rangoon Tramways Act (XXII. of 1883), s. 19 ;

the Explosives Act (IV. of 1884), s. 13 ;

the Punjab Municipalities Act (XX. of 1891), ss. 81 to 83 ;

the Burma Gaming Act (XVI. of 1884), s. 7, see now Bur. Act I. of

1899 ;

the Burma Municipal Act (Burma Act III. of 1898), s. 194 ;

the Upper Burma Forest Regulation (V. of 1898), s. 63.

(2) This section applies also to the police in the town of Calcutta.*

Arrest of vagabonds, habitual robbers, &c.

55.† (1) Any officer in charge of a police-station may, in like manner, arrest or cause to be arrested—

- (a) any person found taking precautions to conceal his presence within the limits of such station, under circumstances which afford reason to believe that he is taking such precautions with a view to committing a cognizable offence; or
- (b) any person within the limits of such station who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself; or
- (c) any person who is by repute an habitual robber, house-breaker, or thief, or an habitual receiver of stolen property knowing it to be stolen, or who by repute habitually commits extortion, or, in order to the committing of extortion, habitually puts or attempts to put persons in fear of injury.

(2) This section applies also to the police in the town of Calcutta.*

56. (1) When any officer in charge of a police-station requires any officer subordinate to him to arrest without a warrant (otherwise than in his presence) any person who may lawfully be arrested without a warrant, he shall deliver to the officer required to make the arrest an order in writing, specifying the person to be arrested and the offence or other cause for which the arrest is to be made.

(2) This section applies also to the police in the town of Calcutta.*

* In each sub.-s. (2) of ss. 54-56, the letter "s" in the word "towns" and the words "and Bombay" after the word "Calcutta" have been repealed by Bom. Act IV. of 1902.

† In Upper Burma, any police-officer may exercise the powers conferred by this section on a police-officer in charge of a police-station—See Schedule (s. VI.) to the Upper Burma Criminal Justice Regulation (V. of 1892).

57.* (1) When any person, who, in the persence of a police-officer, has committed, or has been accused of committing, a non-cognizable offence, refuses, on demand of such officer, to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained.

(2) When the true name and residence of such person have been ascertained, he shall be released on his executing a bond, with or without sureties, to appear before a Magistrate if so required :

Provided that, if such person is not resident in British India, the bond shall be secured by a surety or sureties resident in British India.

(3) Should the true name and residence of such person not be ascertained within twenty-four hours from the time of arrest, or should he fail to execute the bond, or, if so required, to furnish sufficient sureties, he shall forthwith be forwarded to the nearest Magistrate having jurisdiction.

58. A police-officer may, for the purpose of arresting without warrant any person whom he is authorized to arrest under this chapter, pursue such person into any place in British India.

59. (1) Any private person may arrest any person who, in his view, commits a non-bailable and cognizable offence, or who has been proclaimed as an offender ;

and shall, without unnecessary delay, make over any person so arrested to a police-officer, or, in the absence of a police-officer, take such person to the nearest police-station.

(2) If there is reason to believe that such person comes under the provisions of section 54, a police-officer shall re-arrest him.

(3) If there is reason to believe that he has committed a non-cognizable offence, and he refuses, on the demand of a police-officer, to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he shall be

* As to power of detention by officer in charge of a police-station in Upper Burma, see Upper Burma Criminal Justice Regulation (V. of 1892.)

dealt with under the provisions of section 57. If there is no sufficient reason to believe that he has committed any offence, he shall be at once released.

60. A police-officer making an arrest without warrant shall, without unnecessary delay, and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police-station.

Person arrested to be taken before Magistrate or officer in charge of police-station.

61.* No police-officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

Person arrested not to be detained more than twenty-four hours.

62. Officers in charge of police-stations shall report to the District Magistrate, or, if he so directs, to the sub-divisional Magistrate, the cases of all persons arrested without warrant, within the limits of their respective stations, whether such person have been admitted to bail or otherwise.

Police to report apprehensions.

63. No person who has been arrested by a police-officer shall be discharged except on his own bond, or on bail or under the special order of a Magistrate.

Discharge of person apprehended.

64. When any offence is committed in the presence of a Magistrate within the local limits of his jurisdiction, he may himself arrest or order any person to arrest the offender, and may thereupon, subject to the provisions herein contained as to bail,† commit the offender to custody.

Offence committed in Magistrate's presence.

65. Any Magistrate may at any time arrest or direct the arrest, in his presence, within the local limits of his jurisdiction, of any person

Arrest by or in presence of Magistrate.

* As to power of detention by officer in charge of a police-station in Upper Burma, see the Upper Burma Criminal Justice Regulation (V. of 1892).

† See Ch. XXXIX., *infra*.

for whose arrest he is competent at the time and in the circumstances to issue a warrant.

66. If a person in lawful custody escapes or is rescued, the Power, on escape, to pursue person from whose custody he escaped and retake. or was rescued may immediately pursue and arrest him in any place in British India.

67. The provisions of sections 47, 48, and 49 shall apply to Provisions of sections 47, arrests under section 66 although the 48, and 49 to apply to arrests person making any such arrest is not under section 66. acting under a warrant, and is not a police-officer having authority to arrest.

CHAPTER VI.—OF PROCESSES TO COMPEL APPEARANCE

A.—*Summons.*

68. (1) Every summons* issued by a Court under this Code shall be in writing, in duplicate, signed and sealed by the presiding officer of such Court, or by such other officer as the High Court may, from time to time, by rule direct.

(2) Such summons shall be served by a police-officer, or, subject to such rules as the Local Government may prescribe in this behalf, by an officer of the Court issuing it or other public servant.

(3) This section applies also to the police in the towns of Calcutta and Bombay.

69 (1) The summons shall, if practicable, be served personally on the person summoned by delivering or tendering to him one of the duplicates of the summons.

(2) Every person on whom a summons is so served shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

(3) Service of a summons on an incorporated company or other body corporate may be effected by serving it on the secretary,

* For forms, see Sch. V., Forms I. and XXXI., *infra*.

local manager, or other principal officer of the corporation, or by registered post-letter addressed to the chief officer of the corporation in British India. In such case the service shall be deemed to have been effected when the letter would arrive in ordinary course of post.

70. Where the person summoned cannot, by the exercise of due diligence, be found, the summons may be served by leaving one of the duplicates for him with some adult male member of his family, or, in a presidency-town, with his servant residing with him; and the person with whom the summons is so left shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

71. If service in the manner mentioned in sections 69 and 70 cannot, by the exercise of due diligence, be effected, the serving officer shall affix one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides; and thereupon the summons shall be deemed to have been duly served.

72. (1) Where the person summoned is in the active service of the Government or of a Railway Company, the Court issuing the summons shall ordinarily send it in duplicate to the head of the office in which such person is employed; and such head shall thereupon cause the summons to be served in manner provided by section 69, and shall return it to the Court under his signature with the endorsement required by that section.

(2) Such signature shall be evidence of due service.

73. When a Court desires that a summons issued by it shall be served at any place outside the local limits of its jurisdiction, it shall ordinarily send such summons in duplicate to a Magistrate within the local limits of whose jurisdiction the person summoned resides or is, to be there served.

74. (1) When a summons issued by a Court is served outside the local limits of its jurisdiction, and in any case where the officer who has served a summons is not present at the hearing of the case, an affidavit, purporting to be made before a Magistrate that such summons has been served, and a duplicate

of the summons purporting to be endorsed (in manner provided by section 69 or section 70) by the person to whom it was delivered or tendered, or with whom it was left, shall be admissible in evidence, and the statements made therein shall be deemed to be correct unless and until the contrary is proved.

(2) The affidavit mentioned in this section may be attached to the duplicate of the summons, and returned to the Court.

*B.—Warrant of Arrest.**

75. (1) Every warrant of arrest issued by a Court under this Code shall be in writing, signed by the presiding officer, or, in the case of a Bench of Magistrates, by any member of such Bench; and shall bear the seal of the Court.

(2) Every such warrant shall remain in force until it is cancelled by the Court which issued it, or until it is executed.

76. (1) Any Court issuing a warrant for the arrest of any person may, in its discretion, direct, by endorsement on the warrant, that, if such person executes a bond with sufficient sureties for his attendance before the Court at a specified time and thereafter until otherwise directed by the Court, the officer to whom the warrant is directed shall take such security, and shall release such person from custody.

(2) The endorsement† shall state—

(a) the number of sureties;

(b) the amount in which they and the person for whose arrest the warrant is issued are to be respectively bound; and

(c) the time at which he is to attend before the Court.

(3) Whenever security is taken under this section the officer to whom the warrant is directed shall forward the bond to the Court.

* These provisions apply to warrants issued under s. 10 of the Upper Burma Ruby Regulation (XII. of 1887), sub s. (2) of that section.

† For forms, see Sch. V., Form II.

77. (1) A warrant of arrest shall ordinarily be directed to one or more police officers, and, when issued by a Presidency Magistrate, shall always be so directed ; but any other Court issuing such a warrant may, if its immediate execution is necessary, and no police-officer is immediately available, direct it to any other person or persons : and such person or persons shall execute the same.

Warrant to whom directed. (2) When a warrant is directed to more officers or persons than one, it may be executed by all, or by any one or more, of them.

78. (1) A District Magistrate or Sub-divisional Magistrate may direct a warrant to any landholder, farmer, or manager of land within his district or sub-division for the arrest of any escaped convict, proclaimed offender, or person who has been accused of a non-bailable offence, and who has eluded pursuit.

(2) Such landholder, farmer, or manager shall acknowledge in writing the receipt of the warrant, and shall execute it if the person for whose arrest it was issued is in, or enters on, his land or farm, or the land under his charge.

(3) When the person against whom such warrant is issued, is arrested, he shall be made over with the warrant to the nearest police-officer, who shall cause him to be taken before a Magistrate having jurisdiction in the case, unless security is taken under section 76.

79. A warrant directed to any police-officer may also be executed by any other police-officer whose name is endorsed upon the warrant by the officer to whom it is directed or endorsed.

80. The police-officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested, and, if so required, shall show him the warrant.

81. The police-officer or other person executing a warrant of arrest shall (subject to the provisions of section 76 as to security), without unnecessary delay, bring the person arrested before the Court before which he is required by law to produce such person.

Where warrant may be executed.

82. A warrant of arrest may be executed at any place in British India.

83. (1) When a warrant is to be executed outside the local limits of the jurisdiction of the Court issuing the same, such Court may, instead of directing such warrant to a police-officer, forward the same by post or otherwise to any Magistrate or District Superintendent of Police, or the Commissioner of Police in a Presidency-town, within the local limits of whose jurisdiction it is to be executed.

(2)* The Magistrate or District Superintendent or Commissioner to whom such warrant is so forwarded shall endorse his name thereon, and, if practicable, cause it to be executed in manner hereinbefore provided within the local limits of his jurisdiction.

84. (1) When a warrant directed to a police-officer is to be executed beyond the local limits of the jurisdiction of the Court issuing the same, he shall ordinarily take it for endorsement either to a Magistrate or to a police-officer not below the rank of an officer in charge of a station, within the local limits of whose jurisdiction the warrant is to be executed.

(2) Such Magistrate or police-officer shall endorse his name thereon, and such endorsement shall be sufficient authority to the police-officer to whom the warrant is directed to execute the same within such limits, and the local police shall, if so required, assist such officer in executing such warrant.

(3) Whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate or police-officer within the local limits of whose jurisdiction the warrant is to be executed will prevent such execution, the police-officer to whom it is directed may execute the same without such endorsement in any place beyond the local limits of the jurisdiction of the Court which issued it.

(4) This section applies also to the police in the towns of Calcutta and Bombay.

* This sub-section, so far as it applies to the Police in the Town of Bombay, has been repealed by Bom. Act IV. of 1902.

85.* When a warrant of arrest is executed outside the district in which it was issued, the person arrested shall, unless the Court which issued the warrant is within twenty miles of the place of arrest or is nearer than the Magistrate or District Superintendent of Police or the Commissioner of Police in a Presidency town within the local limits of whose jurisdiction the arrest was made, or unless security is taken under section 76, be taken before such Magistrate or Commissioner or District Superintendent.

Procedure on arrest of person against whom warrant issued.

86.* (1) Such Magistrate or District Superintendent or Commissioner shall, if the person arrested appears to be the person intended by the Court which issued the warrant, direct his removal in custody to such Court :

Procedure by Magistrate before whom person arrested is brought.

Provided that, if the offence is bailable, and such person is ready and willing to give bail to the satisfaction of such Magistrate, District Superintendent, or Commissioner, or a direction has been endorsed under section 76 on the warrant and such person is ready and willing to give the security required by such direction, the Magistrate, District Superintendent, or Commissioner shall take such bail or security,† as the case may be, and forward the bond to the Court which issued the warrant.

(2) Nothing in this section shall be deemed to prevent a police-officer from taking security under section 76.

C.—Proclamation and Attachment.

87. (1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation‡ requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

Proclamation for person absconding.

* This section, so far as it applies to the Police in the Town of Bombay, has been repealed by Bom. Act IV. of 1902.

† See Sch. V., Form III., *infra*.

‡ See Sch. V., Forms IV. and V., *infra*.

(2) The proclamation shall be published as follows:—

- (a) It shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides ;
- (b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides, or to some conspicuous place of such town or village ; and
- (c) a copy thereof shall be affixed to some conspicuous part of the Court-house.

(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

88. (1) The Court issuing a proclamation under section 87 may at any time order the attachment* of any property, moveable or immovable, or both, belonging to the proclaimed person.

(2) Such order shall authorize the attachment of any property belonging to such person within the district in which it is made; and it shall authorize the attachment of any property belonging to such person without such district when endorsed by the District Magistrate or Chief Presidency Magistrate within whose district such property is situate.

(3) If the property ordered to be attached is a debt or other moveable property, the attachment under this section shall be made—

- (a) by seizure ; or
- (b) by the appointment of a receiver ; or
- (c) by an order in writing prohibiting the delivery of such property to the proclaimed person, or to any one on his behalf ; or
- (d) by all or any two of such methods as the Court thinks fit.

(4) If the property ordered to be attached is immovable, the attachment under this section shall, in the case of land paying revenue to Government, be made through the Collector of the district in which the land is situate, and in all other cases—

* See Sch. V., Form VI., *infra*.

(e) by taking possession ; or

(f) by the appointment of a receiver ; or

(g) by an order in writing prohibiting the payment of rent or delivery of property to the proclaimed person, or to any one on his behalf ; or

(h) by all or any two of such methods as the Court thinks fit.

(5) If the property ordered to be attached consists of live-stock or is of a perishable nature, the Court may, if it thinks it expedient, order immediate sale thereof, and, in such case, the proceeds of the sale shall abide the order of the Court.

(6) The powers, duties, and liabilities of a receiver appointed under this section shall be the same as those of a receiver appointed under Chapter XXXVI. of the Code of Civil Procedure.*

(7) If the proclaimed person does not appear within the time specified in the proclamation, the property under attachment shall be at the disposal of Government ; but it shall not be sold until the expiration of six months from the date of the attachment unless it is subject to speedy and natural decay, or the Court considers that the sale would be for the benefit of the owner, in either of which cases the Court may cause it to be sold whenever it thinks fit.

89. If, within two years from the date of the attachment, any Restoration of attached person whose property is or has been at property. the disposal of Government under subsection (7) of section 88 appears voluntarily, or is apprehended and brought before the Court by whose order the property was attached, or the Court to which such Court is subordinate, and proves to the satisfaction of such Court that he did not abscond or conceal himself for the purpose of avoiding execution of the warrant, and that he had not such notice of the proclamation as to enable him to attend within the time specified therein, such property, or, if the same has been sold, the net proceeds of the sale, or if part only thereof has been sold, the net proceeds of the sale, and the residue of the property, shall, after satisfying thereout all costs incurred in consequence of the attachment, be delivered to him.

D.—Other Rules regarding Processes.

90. A Court may, in any case in which it is empowered by Issue of warrant in lieu of, this Code to issue a summons for the or in addition to, summons. appearance of any person other than a

* New Act. V. of 1908.

juror or assessor, issue, after recording its reasons in writing, a warrant* for his arrest—

- (a) if, either before the issue of such summons, or after the issue of the same, but before the time fixed for his appearance, the Court sees reason to believe that he has absconded, or will not obey the summons ; or
- (b) if at such time he fails to appear, and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith, and no reasonable excuse is offered for such failure.

91. When any person for whose appearance or arrest the Power to take bond for ap- officer presiding in any Court is empowered to issue a summons or warrant is present in such Court, such officer may require such person to execute a bond, with or without sureties, for his appearance in such Court.

92. When any person who is bound by any bond taken under Arrest on breach of bond this Code to appear before a Court does not so appear, the officer presiding in such Court may issue a warrant directing that such person be arrested and produced before him.

93. The provisions contained in this chapter relating to a Provisions of this chapter summons and warrant, and their issue, generally applicable to sum- service, and execution, shall, so far monses and warrants of ar- as may be, apply to every summons and rest. every warrant of arrest issued under this Code.

CHAPTER VII.—OF PROCESSSES TO COMPEL THE PRODUCTION OF DOCUMENTS AND OTHER MOVABLE PROPERTY, AND FOR THE DISCOVERY OF PERSONS WRONGFULLY CONFINED.

A.—Summons to produce.

94. (1) Whenever any Court, or, in any place beyond the limits of the towns of Calcutta and Summons to produce docu- ment or other thing. Bombay, any officer in charge of a police-station, considers that the production of any document or other

* See Sch. V., Form VII., *infra*.

thing is necessary or desirable for the purposes of any investigation, inquiry, trial, or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed to affect the Indian Evidence Act, 1872,* sections 123 and 124, or to apply to a letter, post-card, telegram, or other document or any parcel or thing in the custody of the Postal or Telegraph Authorities.

95. (1) If any document, parcel, or thing in such custody is,
Procedure as to letters and telegrams. in the opinion of any District Magistrate, Chief Presidency Magistrate, High Court, or Court of Session, wanted for the purpose of any investigation, inquiry, trial, or other proceeding under this Code such Magistrate or Court may require the Postal or Telegraph Authorities, as the case may be, to deliver such document, parcel, or thing to such person as such Magistrate or Court directs.

(2) If any such document, parcel, or thing is, in the opinion of any other Magistrate, or of any Commissioner of Police or District Superintendent of Police, wanted, for any such purpose, he may require the Postal or Telegraph Department, as the case may be, to cause search to be made for and to detain such document, parcel, or thing pending the orders of any such District Magistrate, Chief Presidency Magistrate, or Court.

B.—Search-warrant.†

96. (1) Where any Court has reason to believe that a person
When search-warrant may be issued. to whom a summons or order under section 94 or a requisition under section

* Act I. of 1872.

† These provisions apply to searches under s. 9 (1) and (2) of the Upper Burma Ruby Regulation (XII. of 1887).—See s. 9 (3) of that Regulation.

For power to invest any forest-officer with power to issue such warrants, see Upper Burma Forest Regulation (V. of 1898), s. 71 (c). See now Bur. Act (IV. of 1902.)

95, sub-section (1), has been or might be addressed, will not or would not produce the document or thing as required by such summons or requisition

or where such document or thing is not known to the Court to be in the possession of any person,

or where the Court considers that the purposes of any inquiry, trial, or other proceeding under this Code will be served by a general search or inspection,

It may issue a search-warrant;* and the person to whom such warrant is directed may search or inspect in accordance therewith and the provisions hereinafter contained.

(2) Nothing herein contained shall authorize any Magistrate other than a District Magistrate or Chief Presidency Magistrate to grant a warrant to search for a document, parcel, or other thing in the custody of the Postal or Telegraph Authorities.

97. The Court may, if it thinks fit, specify in the warrant the particular place or part thereof to which
 Power to restrict warrant. only the search or inspection shall extend; and the person charged with the execution of such warrant shall then search or inspect only the place or part so specified.

98. (1) If a District Magistrate, Sub-divisional Magistrate, Presidency Magistrate, or Magistrate of the first class, upon information and after
 Search of house suspected to contain stolen property, forged documents, &c. such inquiry as he thinks necessary, has reason to believe that any place is used for the deposit or sale of stolen property,

or for the deposit or sale or manufacture of forged documents, false seals, or counterfeit stamps or coin, or instruments or materials for counterfeiting coin or stamps, or for forging,

or that any forged documents, false seals, or counterfeit stamps or coin, or instruments or materials used for counterfeiting coin or stamps, or for forging, are kept or deposited in any place,

he may by his warrant† authorize any police-officer above the rank of a constable—

(a) to enter, with such assistance as may be required, such place, and

* See Sch. V., Form VIII., *infra*.

† See Sch. V., Form IX., *infra*.

- (b) to search the same in manner specified in the warrant, and
 - (c) to take possession of any property, documents, seals, stamps, or coins therein found, which he reasonably suspects to be stolen, unlawfully obtained, forged, false, or counterfeit, and also of any such instruments and materials as aforesaid, and
 - (d) to convey such property, documents, seals, stamps, coins, instruments, or materials before a Magistrate, or to guard the same on the spot until the offender is taken before a Magistrate, or otherwise to dispose thereof in some place of safety, and
 - (e) to take into custody and carry before a Magistrate every person found in such place who appears to have been privy to the deposit, sale, or manufacture or keeping of any such property, documents, seals, stamps, coins, instruments, or materials, knowing or having reasonable cause to suspect the said property to have been stolen or otherwise unlawfully obtained, or the said documents, seals, stamps, coins, instruments or materials to have been forged, falsified, or counterfeited, or the said instruments or materials to have been or to be intended to be used for counterfeiting coin or stamps, or for forging.
- (2) The provisions of this section with respect to—
- (a) counterfeit coin,
 - (b) coin suspected to be counterfeit, and
 - (c) instruments or materials for counterfeiting coin,
- shall, so far as they can be made applicable, apply respectively to—
- (a) pieces of metal made in contravention of the Metal Tokens Act, 1889,* or brought into British India in contravention of any notification for the time being in force under section 19 of the Sea Customs Act, 1878,†
 - (b) pieces of metal suspected to have been so made or to have been so brought into British India, or to be intended to be issued in contravention of the former of those Acts and

(c) instruments or material for making pieces of metal in contravention of that Act.

99. When, in the execution of a search-warrant at any place beyond the local limits of the jurisdiction of the Court which issued the same, any of the things for which search is made are found, such things, together with the list of the same prepared under the provisions hereinafter contained, shall be immediately taken before the Court issuing the warrant, unless such place is nearer to the Magistrate having jurisdiction therein than to such Court in which case the list and things shall be immediately taken before such Magistrate; and, unless there be good cause to the contrary, such Magistrate shall make an order authorizing them to be taken to such Court.

C.—Discovery of Persons wrongfully confined.

100. If any Presidency Magistrate, Magistrate of the first class, or Sub-divisional Magistrate has reason to believe that any person is confined under such circumstances that the confinement amounts to an offence, he may issue a search-warrant, and the person to whom such warrant is directed may search for the person so confined; and such search shall be made in accordance therewith, and the person, if found, shall be immediately taken before a Magistrate, who shall make such order as, in the circumstances of the case, seems proper.

D.—General Provisions relating to Searches.

101. The provisions of sections 43, 75, 77, 79, 82, 83, and 84 shall, so far as may be, apply to all search-warrants issued under section 96, section 98, or section 100.

102. (1) Whenever any place liable to search or inspection under this chapter is closed, any person residing in or being in charge of, such place shall, on demand of the officer or other person executing the warrant, and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

(2) If ingress into such place cannot be so obtained, the officer or other person executing the warrant may proceed in manner provided by section 48.

(3) Where any person in or about such place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched. If such person is a woman, the direction of section 52 shall be observed.

103. (1) Before making a search under this chapter, the Search to be made in presence of witnesses. officer or other person about to make it shall call upon two or more respectable inhabitants of the locality in which the place to be searched is situate to attend and witness the search.

(2) The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person, and signed by such witnesses; but no person witnessing a search under this section shall be required to attend the Court as a witness of the search unless specially summoned by it.

(3) The occupant of the place searched, or some person in Occupant of place searched may attend. his behalf, shall, in every instance, be permitted to attend during the search, and a copy of the list prepared under this section, signed by the said witnesses, shall be delivered to such occupant or person at his request.

(4) When any person is searched under section 102, sub-section (3), a list of all things taken possession of shall be prepared, and a copy thereof shall be delivered to such person at his request.

E.—Miscellaneous.

Power to impound document, &c., produced.

104. Any Court may, if it thinks fit, impound any document or thing produced before it under this Code

105. Any Magistrate may direct a search to be made in his presence of any place for the search of which he is competent to issue a search-warrant. Magistrate may direct search in his presence.

PART IV.—PREVENTION OF OFFENCES.

CHAPTER VIII.*—OF SECURITY FOR KEEPING THE PEACE AND FOR GOOD BEHAVIOUR.

A.—Security for keeping the Peace on Conviction.

106. (1) Whenever any person accused of rioting, assault, or other offence involving a breach of the peace, or of abetting the same, or of assembling armed men, or taking other unlawful measures with the evident intention of committing the same, or any person accused of committing criminal intimidation, is convicted, of such offence before a High Court, a Court of Session, or the Court of a Presidency Magistrate, a District Magistrate, a Sub-divisional Magistrate, or a Magistrate of the first class,

and such Court is of opinion that it is necessary to require such person to execute a bond for keeping the peace,

such Court may, at the time of passing sentence on such person order him to execute a bond† for a sum proportionate to his means, with or without sureties, for keeping the peace during such period, not exceeding three years, as it thinks fit to fix.

(2) If the conviction is set aside on appeal or otherwise, the bond so executed shall become void.

(3) An order under this section may also be made by an Appellate Court or by the High Court when exercising its powers of revision.

B.—Security for keeping the Peace in other cases and Security for Good Behaviour.

107. (1) Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, or Magistrate of the first class is informed that any person is likely to commit a breach of the peace, or disturb the public tranquillity, or to do any wrongful act that may probably occasion a breach of the peace, or disturb the public tranquillity

* Ss. 20 to 26 of the Sind Frontier Regulation (III. of 1892) are to be read with, and construed as part of, this chapter.—See s. 27 of that Regulation, and s. 3 of this Code, *supra*.

† See Sch. V., From X., *infra*.

the Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for such period not exceeding one year as the Magistrate thinks fit to fix.

(2) Proceedings shall not be taken under this section unless either the person informed against, or the place where the breach of the peace or disturbance is apprehended, is within the local limits of such Magistrate's jurisdiction, and no proceedings shall be taken before any Magistrate, other than a Chief Presidency or District Magistrate, unless both the person informed against and the place where the breach of the peace or disturbance is apprehended are within the local limits of the Magistrate's jurisdiction.

(3) When any Magistrate not empowered to proceed under sub-section (1) has reason to believe that any person is likely to commit a breach of the peace or disturb the public tranquillity, or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity, and that such breach of the peace or disturbance cannot be prevented otherwise than by detaining such person in custody, such Magistrate may, after recording his reasons, issue a warrant for his arrest (if he is not already in custody or before the Court), and may send him before a Magistrate empowered to deal with the case, together with a copy of his reasons.

(4) A Magistrate before whom a person is sent under this section may in his discretion detain such person in custody until the completion of the inquiry hereinafter prescribed.

108. Whenever a Chief Presidency or District Magistrate, or a Presidency Magistrate, or Magistrate of the first class specially empowered by the Local Government in this behalf has information that there is within the limits of his jurisdiction any person who, within or without such limits, either orally or in writing, disseminates or attempts to disseminate, or in anywise abets the dissemination of,—

(a) any seditious matter, that is to say, any matter the publication of which is punishable under section 124A of the Indian Penal Code,* or

* Act XLV. of 1860.

- (b) any matter the publication of which is punishable under section 153A of the Indian Penal Code,* or
- (c) any matter concerning a Judge which amounts to criminal intimidation or defamation under the Indian Penal Code,*

such Magistrate may (in manner hereinafter provided) require such person to show cause why he should not be ordered to execute a bond,† with or without sureties, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit to fix.

No proceedings shall be taken under this section against the editor, proprietor, printer, or publisher of any publication registered under, or printed or published in conformity with, the rules laid down in the Press and Registration of Books Act, 1867,‡ except by the order or under the authority of the Governor-General in Council, or the Local Government or some officer empowered by the Governor-General in Council in this behalf.

109. Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, or Magistrate of the first class receives information—
 Security for good behaviour from vagrants and suspected persons.

- (a) that any person is taking precautions to conceal his presence within the local limits of such Magistrate's jurisdiction, and that there is reason to believe that such person is taking such precautions with a view to committing any offence, or
- (b) that there is within such limits a person who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself,

such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond,† with sureties, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit to fix.

110. Whenever a Presidency Magistrate, District Magistrate, or Sub-divisional Magistrate, or a Magistrate of the first class specially empowered in this behalf by the Local Government, receives information that any person within the local limits of his jurisdiction—
 Security for good behaviour from habitual offenders.

- (a) is by habit a robber, housebreaker, or thief, or

* Act XLV. of 1860.

† See Sch. V., Form XI., *infra*.

‡ Act XXV. of 1867.

- (b) is by habit a receiver of stolen property knowing the same to have been stolen, or
- (c) habitually protects or harbours thieves or aids in the concealment or disposal of stolen property, or
- (d) habitually commits mischief, extortion, or cheating or counterfeiting coin, currency notes, or stamps, or attempts so to do, or
- (e) habitually commits, or attempts to commit, or abets the commission of, offences involving a breach of the peace, or
- (f) is so desperate and dangerous as to render his being at large without security hazardous to the community,

such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond,* with sureties, for his good behaviour for such period, not exceeding three years, as the Magistrate thinks fit to fix.†

111. The provisions of sections 109 and 110 do not apply to
 Proviso as to European European British subjects in cases where
 vagrants. they may be dealt with under the
 European Vagrancy Act, 1874.‡

112. § When a Magistrate acting under section 107, section 108, section 109, or section 110 deems
 Order to be made. it necessary to require any person to
 show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character, and class of sureties (if any) required.

* See Sch. V., Form XI., *infra*.

† In Upper Burma information as to any person who earns his livelihood by carrying on or assisting in carrying on the game of "ti" or any other game or pretended game of a like nature may be dealt with as information of the description mentioned in this section.—See s. 8 of the Burma Gaming Act (XVI. of 1884). See now Bur. Gambling Act (I. of 1899.)

‡ Act IX. of 1874.

§ Ss. 112 and 113, 115, and 117 do not apply to an enquiry under s. 41 of the Punjab Frontier Crimes Regulation (IV. of 1887).

|| Ss. 112 to 125 apply to all cases requiring security for good behaviour under the Upper Burma Frontier Crossing and Disturbed Districts Regulation (IX. of 1887).—See s. 5 (2) of that Regulation.

113.*† If the person in respect of whom such order is made is present in Court, it shall be read over to him, or, if he so desires, the substance thereof shall be explained to him.

114† If such person is not present in Court, the Magistrate shall issue a summons‡ requiring him to appear, or, when such person is in custody, a warrant directing the officer in whose custody he is to bring him before the Court :

Provided that, whenever it appears to such Magistrate, upon the report of a police-officer or upon other information (the substance of which report or information shall be recorded by the Magistrate), that there is reason to fear the commission of a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person, the Magistrate may at any time issue a warrant for his arrest.

115.*† Every summons or warrant issued under section 114 shall be accompanied by a copy of the order made under section 112, and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with, or arrested under, the same.

116† The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of any person called upon to show cause why he should not be ordered to execute a bond for keeping the peace, and may permit him to appear by a pleader.

117.*† (1) When an order under section 112 has been read or explained under section 113 to a person present in Court, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant issued under section 114, the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken, and to take such further evidence as may appear necessary.

* See foot-note (§) on last-preceding page.

† See foot-note (†) on last-preceding page.

‡ See Sch. V., Form XII., *infra*.

(2) Such inquiry shall be made, as nearly as may be practicable, where the order requires security for keeping the peace, in the manner hereinafter prescribed for conducting trials and recording evidence in summons-cases; and, where the order requires security for good behaviour, in the manner hereinafter prescribed for conducting trials and recording evidence in warrant-cases, except that no charge need be framed.

(3) For the purposes of this section the fact that a person is an habitual offender may be proved by evidence of general repute or otherwise.

(4) Where two or more persons have been associated together in the matter under inquiry, they may be dealt with in the same or separate inquiries as the Magistrate shall think just.

118.* (1) If, upon such inquiry, it is proved that it is necessary, for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, with or without sureties, the Magistrate shall make an order accordingly:

Provided,—

first, that no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under section 112:

secondly, that the amount of every bond shall be fixed with due regard to the circumstances of the case, and shall not be excessive:

thirdly, that, when the person in respect of whom the inquiry is made is a minor, the bond shall be executed only by his sureties.

119.* If, on an inquiry under section 117, it is not proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, the Magistrate shall make an entry on the record to that effect, and, if such person is in custody only for the purposes of the inquiry, shall release him, or, if such person is not in custody, shall discharge him.

* See foot-note (1) on p. 46, *supra*,

C.—Proceedings in all Cases subsequent to Order to furnish Security.

120.* (1) If any person in respect of whom an order requiring security is made under section 106 or section 118, is, at the time such order is made, sentenced to, or undergoing a sentence of, imprisonment, the period for which such security is required shall commence on the expiration of such sentence.

(2) In other cases such period shall commence on the date of such order unless the Magistrate, for sufficient reason, fixes a later date.

121.* The bond to be executed by any such person shall bind him to keep the peace or to be of good behaviour, as the case may be, and, in the latter case, the commission or attempt to commit, or the abetment of, any offence punishable with imprisonment, wherever it may be committed, is a breach of the bond.

122.* A Magistrate may refuse to accept any surety offered under this chapter on the ground that, for reasons to be recorded by the Magistrate, such surety is an unfit person.

123 * (1) If any person ordered to give security under section 106 or section 118 does not give such security on or before the date on which the period for which such security is to be given, commences, he shall, except in the case next hereinafter mentioned, be committed to prison,† or, if he is already in prison, be detained in prison‡ until such period expires, or until within such period he gives the security§ to the Court or Magistrate who made the order requiring it.

(2) When such person has been ordered by a Magistrate to give security for a period exceeding one year, such Magistrate shall, if such person does not give such security as aforesaid, issue a warrant directing him to be detained in prison pending the orders of the Sessions Judge, or, if such Magistrate is

* See foot-note (||) on p. 46, *supra*.

† See Sch. V., Forms XIII and XIV., *infra*.

‡ As to punishment for escaping or attempting to escape, see s. 225 of the Indian Penal Code (Act XLV. of 1860).

§ See Sch. V., Form XV., *infra*.

a Presidency Magistrate, pending the orders of the High Court, and the proceedings shall be laid, as soon as conveniently may be, before such Court.

(3) Such Court, after examining such proceedings and requiring from the Magistrate any further information or evidence which it thinks necessary, may pass such order on the case as it thinks fit :

Provided that the period (if any) for which any person is imprisoned for failure to give security shall not exceed three years.

(4) If the security is tendered to the officer in charge of the jail, he shall forthwith refer the matter to the Court or Magistrate who made the order, and shall await the orders of Such Court or Magistrate.

Kind of imprisonment. (5) Imprisonment for failure to give security for keeping the peace shall be simple.

(6) Imprisonment for failure to give security for good behaviour may be rigorous or simple as the Court or Magistrate in each case directs.

124.* (1) Whenever the District Magistrate or a Chief Presidency Magistrate is of opinion that any person imprisoned for failing to give security under this chapter, whether by the order of such Magistrate or that of his predecessor in office, or of some subordinate Magistrate, may be released without hazard to the community or to any other person, he may order such person to be discharged.†

(2) Whenever any person has been imprisoned for failing to give security under this chapter, the Chief Presidency or District Magistrate may (unless the order has been made by some Court superior to his own) make an order reducing the amount of the security or the number of sureties or the time for which security has been required.

(3) Whenever the District Magistrate or a Chief Presidency Magistrate is of opinion that any person imprisoned for failing to give security under this chapter as ordered by the Court of Session or High Court may be released without hazard to the community, such Magistrate shall make an immediate report of the case for the orders of the Court of Session or High Court, as the case may be, and such Court may, if it thinks fit, order such person to be discharged.

* See foot-note (1) on p. 46, *supra*. † See Sch. V., Form XV., *infra*.

125.* The Chief Presidency or District Magistrate may at any time, for sufficient reasons to be recorded in writing, cancel any bond for keeping the peace or for good behaviour executed under this chapter by order of any Court in his district not superior to his Court.

Power of District Magistrate to cancel any bond for keeping the peace or good behaviour.

126. (1) Any surety for the peaceable conduct or good behaviour of another person may at any time apply to a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, or Magistrate of the first class to cancel any bond executed under this chapter within the local limits of his jurisdiction.

Discharge of sureties.

(2) On such application being made, the Magistrate shall issue his summons or warrant, as he thinks fit, requiring the person for whom such surety is bound to appear or to be brought before him.

(3) When such person appears or is brought before the Magistrate, such Magistrate shall cancel the bond, and shall order such person to give, for the unexpired portion of the term of such bond, fresh security of the same description as the original security. Every such order shall, for the purposes of sections 121, 122, 123, and 124, be deemed to be an order made under section 106 or section 113, as the case may be.

CHAPTER IX.†

UNLAWFUL ASSEMBLIES.

127. (1) Any Magistrate or officer in charge of a police-station may command any unlawful assembly, or any assembly of five or more persons likely to cause a disturbance of the public peace, to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

Assembly to disperse on command of Magistrate or police-officer.

(2) This section applies also to the police in the town of Calcutta.‡

* See foot-note (||) on p. 46. *supra*.

† The whole of Chapter IX., so far as it applies to the town of Bombay, has been repealed by Bom. Act IV. of 1902.

‡ In sub-s. (2) of s. 127, the letter "s" in the word "towns" and the words "and Bombay" have been omitted, having been repealed by Bom. Act. IV of 1902.

128. If, upon being so commanded, any such assembly does
 Use of civil force to dis- not disperse, or if, without being so com-
 perse. manded, it conducts itself in such a
 manner as to show a determination not to disperse, any Magistrate
 or officer in charge of a police-station, whether within or without
 the presidency-towns, may proceed to disperse such assembly by
 force, and may require the assistance of any male person, not being
 an officer or soldier in Her Majesty's Army or a volunteer enrolled
 under the Indian Volunteers Act, 1869,* and acting as such, for the
 purpose of dispersing such assembly, and, if necessary, arresting
 and confining the persons who form part of it, in order to disperse
 such assembly, or that they may be punished according to law.

129. If any such assembly cannot be otherwise dispersed, and
 Use of military force. if it is necessary for the public security
 that it should be dispersed, the Magis-
 trate of the highest rank who is present may cause it to be dis-
 persed by military force.

130. (1) When a Magistrate determines to disperse any such
 Duty of officer command- assembly by military force, he may re-
 ing troops required by Magis- quire any commissioned or non-com-
 trate to disperse assembly. missioned officer in command of any
 soldiers in Her Majesty's Army, or of any volunteers enrolled un-
 der the Indian Volunteers Act, 1869,* to disperse such assembly
 by military force, and to arrest and confine such persons forming part
 of it as the Magistrate may direct, or as it may be necessary to
 arrest and confine in order to disperse the assembly, or to have,
 them punished according to law.

(2) Every such officer shall obey such requisition in such man-
 ner as he thinks fit ; but, in so doing, he shall use as little force, and
 do as little injury to person and property, as may be consistent with
 dispersing the assembly and arresting and detaining such persons.

131. When the public security is manifestly endangered by
 Power of commissioned any such assembly, and when no Magis-
 military officers to disperse trate can be communicated with, any
 assembly. commissioned officer of Her Majesty's
 Army may disperse such assembly by military force, and may arrest
 and confine any persons forming part of it in order to disperse such
 assembly, or that they may be punished according to law, but, if
 while he is acting under this section, it becomes practicable for him

to communicate with a Magistrate, he shall do so, and shall thenceforward obey the instructions of the Magistrate as to whether he shall or shall not continue such action.

132. No prosecution against any person for any act purporting to be done under this chapter shall be instituted in any criminal Court except with the sanction of the Governor-General in Council; and—

Protection against prosecution for acts done under this chapter.

(a) no Magistrate or police-officer acting under this chapter in good faith.*

(b) no officer acting under section 131 in good faith.*

(c) no person doing any act in good faith* in compliance with a requisition under section 128 or section 130, and

(d) no inferior officer or soldier, or volunteer, doing any act in obedience to any order which he was bound to obey,

shall be deemed to have thereby committed an offence.

CHAPTER X.

PUBLIC NUISANCES.

133.†† (1) Whenever a District Magistrate, a Sub-divisional Magistrate, or, when empowered by the Local Government in this behalf, a

Conditional order for removal of nuisance.

* For definition of "good faith," see the Indian Penal Code (Act XLV. of 1860). ss. 52 and 76, and s. 3 (20) of the General Clauses Act (X. of 1897).

† Ss. 133 to 144 have been specially extended to the City of Madras.—See s. 29 of the City of Madras Municipal Act Amendment Act (Mad. Act VII. of 1884) and s. 3 (1) of this Act, *supra*. And, as to the meaning of "District Magistrate" in these sections when applied as so extended, see s. 3 (m) of the City of Madras Municipal Act (Mad. Act I. of 1884) as amended by Acts VII. of 1884 and II. of 1892.

‡ The powers of a District Magistrate under the section may be conferred on municipal boards in the North Western Provinces and Oudh, and on municipal committees in the Central Provinces and thereupon the provisions of ss. 133 to 142 both inclusive, with a modification in s. 133 shall apply to all proceedings taken in exercise of the powers so conferred.—See s. 57 of the North-Western Provinces and Oudh Municipalities Act (XV. of 1883) see now N & O. Act (I of 1900) and the Central Provinces Municipal Act (XVIII. of 1889), s. 86, see now C. P. Municipal Act (XVI. of 1903) respectively.

Magistrate of the first class, considers, on receiving a police report or other information, and on taking such evidence (if any) as he thinks fit.

that any unlawful obstruction or nuisance should be removed from any way, river, or channel which is or may be lawfully used by the public, or from any public place, or

that any trade or occupation, or the keeping of any goods or merchandise, by reason of its being injurious to the health or physical comfort of the community, should be suppressed or removed or prohibited, or . .

that the construction of any building or the disposal of any substance, as likely to occasion conflagration or explosion, should be prevented or stopped, or

that any building is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence its removal, repair, or support is necessary, or

that any tank, well, or excavation adjacent to any such way or public place should be fenced in such a manner as to prevent danger arising to the public.

such Magistrate may make a conditional order* requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing, or controlling such building, substance, tank, well, or excavation, within a time to be fixed in the order,

to remove such obstruction or nuisance ; or

to suppress or remove such trade or occupation ; or

to remove such goods or merchandise ; or

to prevent or stop the construction of such building ; or

to remove, repair, or support it ; or

to alter the disposal of such substance ; or

to fence such tank, well, or excavation, as the case may be ; or

to appear before himself or some other Magistrate of the first or second class, at a time and place to be fixed by the order, and move to have the order set aside or modified in manner hereinafter provided.

* See Sch. V., Form XVI., *infra*.

(2) No order duly made by a Magistrate under this section shall be called in question in any Civil Court.

Explanation.—A “public place” includes also property belonging to the State, camping grounds and grounds left unoccupied for sanitary and recreative purposes.

134.* (1) The order shall, if practicable, be served on the person against whom it is made, in manner herein provided for service of a summons.

(2) If such order cannot be so served, it shall be notified by proclamation published in such manner as the Local Government may by rule direct, and a copy thereof shall be stuck up at such place or places as may be fittest for conveying the information to such person.

Person to whom order is addressed to obey or show cause or claim jury. **135.*** The person against whom such order is made shall—

(a) perform, within the time specified in the order, the act directed thereby; or

(b) appear in accordance with such order, and either show cause against the same, or apply to the Magistrate by whom it was made to appoint a jury to try whether the same is reasonable and proper.

136.* If such person does not perform such act or appear and show cause or apply for the appointment of a jury as required by section 135, he shall be liable to the penalty prescribed in that behalf in section 188 of the Indian Penal Code,† and the order shall be made absolute.

137.* (1) If he appears and shows cause against the order, the Magistrate shall take evidence in the matter as in a summons-case.

(2) If the Magistrate is satisfied that the order is not reasonable and proper, no further proceedings shall be taken in the case.

(3) If the Magistrate is not so satisfied, the order shall be made absolute.

* See the foot-notes (††) on p. 53, *supra*.

† Act XLV. of 1860.

Procedure where he claims jury.

138.* (1) On receiving an application under section 135 to appoint a jury, the Magistrate shall—

(a) forthwith appoint a jury† consisting of an uneven number of persons not less than five, of whom the foreman and one-half of the remaining members shall be nominated by such Magistrate, and the other members by the applicant;

(b) summon such foreman and members to attend at such place and time as the Magistrate thinks fit; and

(c) fix a time within which they are to return their verdict.

(2) The time so fixed may, for good cause shown, be extended by the Magistrate.

139.* (1) If the jury or a majority of the jurors find that the order of the Magistrate is reasonable and proper as originally made or subject to a modification which the Magistrate accepts, the Magistrate shall make the order absolute subject to such modification (if any).

(2) In other cases, no further proceedings shall be taken under this chapter.

140.* (1) When an order has been made absolute under section 136, section 137, or section 139, the Magistrate shall give notice‡ of the same to the person against whom the order was made, and shall further require him to perform the act directed by the order within a time to be fixed in the notice, and inform him that, in case of disobedience, he will be liable to the penalty provided by section 188 of the Indian Penal Code.§

(2) If such act is not performed within the time fixed, the Magistrate may cause it to be performed, and may recover the costs of performing it, either by the sale of any building, goods, or other property removed by his order, or by the distress and sale of any other moveable property of such person within or without the local limits

* See the foot-notes (††) on p. 53, *Supra*.

† See Sch. V., Form XVII., *infra*.

‡ See Sch. V., Form XVIII., *infra*.

§ Act XLV. of 1860.

of such Magistrate's jurisdiction. If such other property is without such limits, the order shall authorize its attachment and sale when endorsed by the Magistrate within the local limits of whose jurisdiction the property to be attached is found.

(3) No suit shall lie in respect of anything done in good faith* under this section.

141.† If the applicant, by neglect or otherwise, prevents the appointment of the jury, or if, from any cause, the jury appointed do not return their verdict within the time fixed, or within such further time as the Magistrate may in his discretion allow, the Magistrate may pass such order as he thinks fit, and such order shall be executed in the manner provided by section 140.

142.† (1) If a Magistrate, making an order under section 133, considers that immediate measures should be taken to prevent imminent danger or injury of a serious kind to the public, he may, whether a jury is to be, or has been, appointed or not, issue such an injunction‡ to the person against whom the order was made as is required to obviate or prevent such danger or injury pending the determination of the matter.

(2) In default of such person forthwith obeying such injunction, the Magistrate may himself use, or cause to be used, such means as he thinks fit to obviate such danger, or to prevent such injury.

(3) No suit shall lie in respect of anything done in good faith by a Magistrate under this section.

143.§ A District Magistrate or Sub-divisional Magistrate, or any other Magistrate empowered by the Local Government or the District Magistrate in this behalf, may order|| any person not to repeat or continue a public nuisance as defined in the Indian Penal Code¶ or any special or local law.

* As to definition of "good faith," see the Indian Penal Code (Act XLV of 1860), ss. 52 and 76, and s. 3 (20) of the General Clauses Act (X. of 1897).

† See both the foot-notes (††) on p. 53, *supra*.

‡ See Sch. V., Form XIX., *infra*.

§ See foot-note (†) on p. 53, *supra*.

|| See Sch. V., Form XX., *infra*.

¶ Act XLV. of 1860.

CHAPTER XI.

. TEMPORARY ORDERS IN URGENT CASES OF NUISANCE OR APPREHENDED DANGER.

144.* (1) In case where, in the opinion of a District Magistrate, a Chief Presidency Magistrate, a Sub-divisional Magistrate, or of any other Magistrate specially empowered by the Local Government or the Chief Presidency Magistrate or the District Magistrate to act under this section, immediate prevention or speedy remedy is desirable,

such Magistrate may, by a written order† stating the material facts of the case, and served in manner provided by section 134 direct any person to abstain from a certain act, or to take certain, order with certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance, or injury, or risk of obstruction, annoyance, or injury, to any person lawfully employed, or danger to human life, health, or safety, or a disturbance of the public tranquility, or a riot or an affray.

(2) An order under this section may, in cases of emergency, or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed *ex parte*.

(3) An order under this section may be directed to a particular individual, or to the public generally when frequenting or visiting a particular place.

(4) Any Magistrate may rescind or alter any order made under this section by himself or any Magistrate subordinate to him, or by his predecessor in office.

(5) No order under this section shall remain in force for more than two months from the making thereof unless, in cases of danger to human life, health, or safety, or a likelihood of a riot or an affray, the Local Government, by notification in the official Gazette, otherwise directs.

* See the foot-note (†) on p. 53, *supra*.

† See Sch. V., Form XXI., *infra*.

CHAPTER XII.

DISPUTES AS TO IMMOVABLE PROPERTY.

145. (1) Whenever a District Magistrate, Sub-divisional Magistrate, or Magistrate of the first class is satisfied, from a police-report or other information, that a dispute concerning land, &c., is likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof within the local limits of his jurisdiction, he shall make an order* in writing stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader within a time to be fixed by such Magistrate, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

(2) For the purposes of this section, the expression "land or water" includes buildings, markets, fisheries, crops, or other produce of land, and the rents or profits of any such property.

(3) A copy of the order shall be served in manner provided by this Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute.

(4) The Magistrate shall then, without reference to the merits of the claims of any of such parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive the evidence produced by them respectively, consider the effect of such evidence, take such further evidence (if any) as he thinks necessary, and, if possible, decide whether any and which of the parties was, at the date of the order before mentioned, in such possession of the said subject:

Provided that, if it appears to the Magistrate that any party has, within two months next before the date of such order, been forcibly and wrongfully dispossessed, he may treat the party so dispossessed as if he had been in possession at such date.

Provided, also, that, if the Magistrate considers the case one of emergency he may at any time attach the subject of dispute, pending his decision under this section.

(5) Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such

* See Sch. V., Form XXII., *infra*.

dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under sub-section (1) shall be final.

(6) If the Magistrate decides that one of the parties was in such possession of the said subject, Party in possession to retain possession until legally evicted. he shall issue an order* declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction.†

(7) Proceedings under this section shall not abate by reason only of the death of any of the parties thereto.

146. (1) If the Magistrate decides that none of the parties was then in such possession, or is dispute. unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach it* until a competent Court has determined the rights of the parties thereto, or the person entitled to possession thereof.

(2) When the Magistrate attaches the subject of dispute, he may, if he thinks fit, appoint a receiver thereof who, subject to the control of the Magistrate, shall have all the powers of a receiver appointed under the Code of Civil procedure.‡

147. Whenever any such Magistrate is satisfied as aforesaid Disputes concerning easements, &c. that a dispute likely to cause a breach of the peace exists concerning the right of use of any land or water (including any right of way or other easement over the same) within the local limits of his jurisdiction, he may inquire into the matter in manner provided by section 145, and may, if it appears to him that such right exists, make an order§ permitting such thing to be done, or directing that such thing shall not be done, as the case may be, until the person objecting to such thing being done, or claiming that such thing may be done, obtains the decision of a competent Court adjudging him to be entitled to prevent the doing of, or to do, such thing, as the case may be:

* See Sch. V., Form XXIII., *infra*.

† For limitation of suits to recover possession of such property, see the Indian Limitation Act (XV. of 1877), Sch. II., art. 47. See now Act (IX. of 1908).

‡ Now Act V. of 1908.

§ See Sch. V., Form XXIV., *infra*.

Provided that no order shall be passed under this section permitting the doing of anything where the right to do such thing is exercisable at all times of the year unless such right has been exercised within three months next before the institution of the inquiry; or, where the right is exercisable only at particular seasons or on particular occasions, unless the right has been exercised during the last of such seasons or occasions before such institution.

148. (1) Whenever a local inquiry is necessary for the purposes of this chapter, any District Magistrate or Sub-divisional Magistrate may depute any Magistrate subordinate to him to make the inquiry, and may furnish him with such written instructions as may seem necessary for his guidance, and may declare by whom the whole or any part of the necessary expenses of the inquiry shall be paid.

(2) The report of the person so deputed may be read as evidence in the case.

(3) When any costs have been incurred by any party to a proceeding under this chapter for witnesses' or pleaders' fees, or both, the Magistrate passing a decision under section 145, section 146, or section 147 may direct by whom such costs shall be paid, whether by such party, or by any other party to the proceeding, and whether in whole or in part or proportion. All costs so directed to be paid may be recovered as if they were fines.

CHAPTER XIII.

PREVENTIVE ACTION OF THE POLICE.

149. Every police-officer may interpose for the purpose of preventing, and shall, to the best of his ability, prevent, the commission of any cognizable offence.

150. Every police-officer receiving information of a design to commit any cognizable offence, shall communicate such information to the police-officer to whom he is subordinate, and to any other officer whose duty it is to prevent or take cognizance of the commission of any such offence.

151. A police-officer, knowing of a design to commit any cognizable offence, may arrest, without orders from a Magistrate, and without a warrant, the person so designing if it appears to such officer that the commission of the offence cannot be otherwise prevented.

152. A police-officer may, of his own authority, interpose to prevent any injury attempted to be committed in his view to any public property, moveable or immoveable, or the removal or injury of any public land-mark or buoy or other mark used for navigation.

153. (1) Any officer in charge of a police-station may, without a warrant, enter any place within the limits of such station for the purpose of inspecting or searching for any weights or measures or instruments for weighing used or kept therein whenever he has reason to believe that there are in such place any weights, measures, or instruments for weighing which are false.

(2) If he finds in such place any weights, measures, or instruments for weighing which are false, he may seize the same, and shall forthwith give information of such seizure to a Magistrate having jurisdiction.

PART V.—INFORMATION TO THE POLICE AND THEIR POWERS TO INVESTIGATE.

CHAPTER XIV.

154. Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police-station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the Local Government may prescribe in this behalf.

155.* (1) When information is given to an officer in charge of a police-station of the commission of a non-cognizable offence, he shall enter in a book to be kept as aforesaid the substance of such information, and refer the informant to the Magistrate.

(2) No police-officer shall investigate a non-cognizable case without the order of a Magistrate of the first or second class having power to try such case or commit the same for trial, or of a Presidency Magistrate.

(3) Any police-officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police-station may exercise in a cognizable case.

156. (1) Any officer in charge of a police-station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XV. relating to the place of inquiry or trial.

(2) No proceeding of a police-officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above mentioned.

157. (1) If, from information received or otherwise, an officer in charge of a police-station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police-report, and shall proceed in person, or shall depute one of his subordinate officers to proceed, to the spot to investigate the facts and circumstances of the case, and to take such measures as may be necessary for the discovery and arrest of the offender :

* This section, so far as it applies to the Police in the Town of Bombay, has been repealed by Bom. Act IV. of 1902.

Provided as follows :—

(a) When any information as to the commission of any such

Where local investigation offence is given against any person by name, and the case is not of a serious nature, the officer in charge of a police-station need not proceed in person, or depute a subordinate officer to make an investigation on the spot :

(b) If it appear to the officer in charge of a police-station

Where police-officer in charge sees no sufficient ground for entering on an investigation, he shall not investigate the case.

(2) In each of the cases mentioned in clauses (a) and (b) of the proviso to sub-section (1), the officer in charge of the police-station shall state in his said report his reasons for not fully complying with the requirements of that sub-section.

158. (1) Every report sent to a Magistrate under section 157 shall, if the Local Government so directs, be submitted through such superior officer of police as the Local Government, by general or special order, appoints in that behalf.

(2) Such superior officer may give such instructions to the officer in charge of the police-station as he thinks fit, and shall, after recording such instructions on such report, transmit the same without delay to the Magistrate.

159. Such Magistrate, on receiving such report, may direct an investigation, or, if he thinks fit, at once proceed, or depute any Magistrate subordinate to him to proceed, to hold a preliminary inquiry into, or otherwise to dispose of, the case in manner provided in this Code.

160. Any police-officer making an investigation under this chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the circumstances of the case ; and such person shall attend as so required.

161. (1) Any police-officer making an investigation under this chapter may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

(2) Such person shall be bound to answer all questions relating to such case put to him by such officer other than questions the answers to which would have a tendency to expose him to a criminal charge, or to a penalty or forfeiture.

162. (1) No statement made by any person to a police-officer in the course of an investigation under this chapter shall, if taken down in writing, be signed by the person making it, nor shall such writing be used as evidence :

Provided that, when any witness is called for the prosecution whose statement has been taken down in writing as aforesaid, the Court shall, on the request of the accused, refer to such writing, and may then, if the Court thinks it expedient in the interests of justice, direct that the accused be furnished with a copy thereof ; and such statement may be used to impeach the credit of such witness in manner provided by the Indian Evidence Act, 1872.*

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of section 32, clause (1), of the Indian Evidence Act, 1872.*

163. (1) No police-officer or person in authority shall offer or make, or cause to be offered or made, any such inducement, threat, or promise as is mentioned in the Indian Evidence Act, 1872,* section 24.

(2) But no police-officer or other person shall prevent, by any caution or otherwise, any person from making, in the course of any investigation under this chapter, any statement which he may be disposed to make of his own free will.

164. (1) Every Magistrate not being a police-officer may record any statement or confession made to him in the course of an investigation under this chapter, or at any time afterwards before the commencement of the inquiry or trial.

* Act I. of 1872.

(2) Such statements shall be recorded in such of the manners hereinafter prescribed for recording evidence as is, in his opinion, best fitted for the circumstances of the case. Such confessions shall be recorded and signed in the manner provided in section 364, and such statements or confessions shall then be forwarded to the Magistrate by whom the case is to be inquired into or tried.

(3) No Magistrate shall record any such confession unless, upon questioning the person making it, he has reason to believe that it was made voluntarily; and, when he records any confession, he shall make a memorandum at the foot of such record to the following effect :—

“I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it, and admitted by him to be correct, and it contains a full and true account of the statement made by him.

(Signed) A. B.,
Magistrate.”

Explanation.—It is not necessary that the Magistrate receiving and recording a confession or statement should be a Magistrate having jurisdiction in the case.

165. (1) Whenever an officer in charge of a police-station, or a police-officer making an investigation, considers that the production of any document or thing is necessary to the conduct of an investigation into any offence which he is authorized to investigate, and there is reason to believe that a person to whom a summons or order under section 94 has been or might be issued will not or would not produce such document or thing according to the directions of the summons or order, or when such document or thing is not known to be in the possession of any person, such officer may search, or cause search to be made, for the same in any place within the limits of the station of which he is in charge, or to which he is attached.

(2) Such officer shall, if practicable, conduct the search in person.

(3) If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he may require any officer subordinate to him to make the search, and he shall deliver to such subordinate officer an order in

writing, specifying the document or thing for which search is to be made, and the place to be searched; and such subordinate officer may thereupon search for such thing in such place.

(4) The provisions of this Code as to search-warrants* shall, so far as may be, apply to a search made under this section.

166. (1) An officer in charge of a police-station may require an officer in charge of another police-station, whether in the same or a different district, to cause a search to be made in any place in any case in which the former officer might cause such search to be made within the limits of his own station.

(2) Such officer, on being so required, shall proceed according to the provisions of section 165, and shall forward the thing found, if any, to the officer at whose request the search was made.

167. (1) Whenever it appears that any investigation under this chapter cannot be completed within the period of twenty-four hours fixed by section 61, and there are grounds for believing that the accusation or information is well founded, the officer in charge of the police-station shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused, if any, to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time authorize the detention of the accused in such custody as such Magistrate thinks fit for a term not exceeding fifteen days in the whole. If he has not jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction.

(3) A Magistrate authorizing under this section detention in the custody of the police shall record his reasons for so doing.

(4) If such order is given by a Magistrate other than the District Magistrate or Sub-divisional Magistrate, he shall forward a copy of his order, with his reasons for making it, to the Magistrate to whom he is immediately subordinate.

168. When any subordinate police-officer has made any investigation under this chapter, he shall report the result of such investigation to the officer in charge of the police-station.

169. If, upon an investigation under this chapter, it appears to the officer in charge of the police-station that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond,* with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police-report, and to try the accused, or commit him for trial.

170. (1) If, upon an investigation under this chapter, it appears to the officer in charge of the police-station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police-report, and to try the accused or commit him for trial, or, if the offence is bailable, and the accused is able to give security, shall take security† from him for his appearance before such Magistrate on a day fixed, and for his attendance from day to day before such Magistrate until otherwise directed.

(2) When the officer in charge of a police-station forwards an accused person to a Magistrate, or takes security for his appearance before such Magistrate under this section, he shall send to such Magistrate any weapon or other article which it may be necessary to produce before him, and shall require the complainant (if any) and so many of the persons who appear to such officer to be acquainted with the circumstances of the case as he may think necessary, to execute a bond* to appear before the Magistrate as thereby directed, and prosecute or give evidence (as the case may be) in the matter of the charge against the accused.

(3) If the Court of the District Magistrate or Sub-divisional Magistrate is mentioned in the bond, such Court shall be held to include any Court to which such Magistrate may refer the case for inquiry or trial, provided reasonable notice of such reference is given to such complainant or persons.

* See Sch. V., Form XXV., *infra*.

† See Sch. V., Form XXVI., *infra*.

(4) The day fixed under this section shall be the day whereon the accused person is to appear if security for his appearance has been taken, or the day on which he may be expected to arrive at the Court of the Magistrate if he is to be forwarded in custody.

(5) The officer in whose presence the bond is executed shall deliver a copy thereof to one of the persons who executed it, and shall then send to the Magistrate the original with his report.

Complainants and witnesses not to be required to accompany police-officer.

171. No complainant or witness on his way to the Court of the Magistrate shall be required to accompany a police-officer,

or shall be subjected to unnecessary restraint or inconvenience,

Complainants and witnesses not to be subjected to restraint.

or required to give any security for his appearance other than his own bond :

Provided that, if any complainant or witness refuses to attend or to execute a bond as directed in section 170, the officer in charge of the police-station may forward him in custody to the Magistrate, who may detain him in custody until he executes such bond, or until the hearing of the case is completed.

172. (1) Every police-officer making an investigation under this chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.

(2) Any Criminal Court may send for the police-diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial. Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court ; but, if they are used by the police-officer who made them to refresh his memory, or, if the Court uses them for the purposes of contradicting such police-officer, the provisions of the Indian Evidence Act, 1872,* section 161 or section 145, as the case may be, shall apply.

* Act I. of 1872.

173. (1) Every investigation under this chapter shall be completed without unnecessary delay, and, as soon as it is completed, the officer in charge of the police-station shall forward to a Magistrate empowered to take cognizance of the offence on a police-report, a report in the form prescribed by the Local Government, setting forth the names of the parties, the nature of the information, and the names of the persons who appear to be acquainted with the circumstances of the case, and stating whether the accused person has been forwarded in custody, or has been released on his bond, and, if so, whether with or without sureties.

(2) Where a superior officer of police has been appointed under section 158, the report shall, in any cases in which the Local Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police-station to make further investigation.

(3) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

174.* (1) The officer in charge of a police-station, or some other police-officer specially empowered by the Local Government in that behalf, on receiving information that a person—

(a) has committed suicide, or

(b) has been killed by another or by an animal, or by machinery, or by an accident, or

(c) has died under circumstances raising a reasonable suspicion that some other person has committed an offence,

shall immediately give intimation thereof to the nearest Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the Local Government, or by any general or special order of the District or Sub-divisional Magistrate, shall proceed to the place where the body of such deceased person

* For form in which ss. 174 to 176 should be read in their application to the area comprised within the local limits of the ordinary original civil jurisdiction of the High Court at Madras, see s. 4 (2) of the Madras Coroners Act (V. of 1889).

is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises, and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any), such marks appear to have been inflicted.

(2) The report shall be signed by such police-officer and other persons, or by so many of them, as concur therein, and shall be forthwith forwarded to the District Magistrate, or the Sub-divisional Magistrate.

(3) When there is any doubt regarding the cause of death, or when, for any other reason, the police-officer considers it expedient so to do, he shall, subject to such rules as the Local Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon or other qualified medical man appointed in this behalf by the Local Government if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

(4) In the Presidencies of Fort St. George and Bombay, investigations under this section may be made by the head of the village, who shall then report the result to the nearest Magistrate authorized to hold inquests,

(5) The following Magistrates are empowered to hold inquests, namely, any District Magistrate or Sub-divisional Magistrate, and any Magistrate specially empowered in this behalf by the Local Government or the District Magistrate.

175. (1) A police-officer proceeding under section 174 may, by order in writing, summon two or more persons as aforesaid for the purpose of the said investigation, and any other person who appears to be acquainted with the facts of the case. Every person so summoned shall be bound to attend, and to answer truly all questions other than questions the answers to which would have a tendency to expose him to a criminal charge, or to a penalty or forfeiture.

(2) If the facts do not disclose a cognizable offence to which section 170 applies, such persons shall not be required by the police-officer to attend a Magistrate's Court.

176. (1) When any person dies while in the custody of the police, the nearest Magistrate empowered to hold inquests shall, and, in any other case mentioned in section 174, clauses (a), (b), and (c) of subsection (1), any Magistrate so empowered may, hold an inquiry into the cause of death, either instead of, or in addition to, the investigation held by the police-officer; and, if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence. The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any of the manners hereinafter prescribed according to the circumstances of the case.

(2) Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his death, the Magistrate may cause the body to be disinterred and examined.*

PART VI.—PROCEEDINGS IN PROSECUTIONS.

CHAPTER XV.

OF THE JURISDICTION OF THE CRIMINAL COURTS IN INQUIRIES AND TRIALS.

A.—Place of Inquiry or Trial.

177. Every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed.

Ordinary place of inquiry and trial.

178. Notwithstanding anything contained in section 177, the Local Government may direct that any cases or class of cases committed for trial in any district may be tried in any sessions division:

Power to order cases to be tried in different sessions divisions.

* A similar power is entrusted to the Coroners of Calcutta and Bombay.—See the Coroners Act (IV. of 1871).

Provided that such direction is not repugnant to any direction previously issued by the High Court under section 15 of the Indian High Courts Act, 1861,* or under this Code, section 526.

179. When a person is accused of the commission of any offence by reason of anything which has been done, and of any consequence which has ensued, such offence may be inquired into or tried by a Court within the local limits of whose jurisdiction any such thing has been done, or any such consequence has ensued.

Illustrations.

(a.) A is wounded within the local limits of the jurisdiction of Court H, and dies within the local limits of the jurisdiction of Court Z: The offence of the culpable homicide of A may be inquired into or tried either by X or Z.

(b.) A is wounded within the local limits of the jurisdiction of Court X, and is, during ten days within the local limits of the jurisdiction of Court Y, and, during ten days more within the local limits of the jurisdiction of Court Z, unable, in the local limits of the jurisdiction of either Court Y or Court Z, to follow his ordinary pursuits: The offence of causing grievous hurt to A may be inquired into or tried by X, Y, or Z.

(c.) A is put in fear of injury within the local limits of the jurisdiction of Court X, and is thereby induced, within the local limits of the jurisdiction of Court Y, to deliver property to the person who put him in fear: The offence of extortion committed on A may be inquired into or tried either by X or Y.

(d.) A is wounded in the Native State of Baroda, and dies of his wounds in Poona: The offence of causing A's death may be inquired into and tried in Poona.

180. When an act is an offence by reason of its relation to any other act which is also an offence, or which would be an offence if the doer were capable of committing an offence, a charge of the first-mentioned offence may be inquired into or tried by a Court within the local limits of whose jurisdiction either act was done.

Illustrations.

(a.) A charge of abetment may be inquired into or tried either by the Court within the local limits of whose jurisdiction the abetment was com-

* Stat. 24 & 25 Vict., c. 104.

mitted, or by the Court within the local limits of whose jurisdiction the offence abetted was committed.

(b.) A charge of receiving or retaining stolen goods may be inquired into or tried either by the Court within the local limits of whose jurisdiction the goods were stolen, or by any Court within the local limits of whose jurisdiction any of them were at any time dishonestly received or retained.

(c.) A charge of wrongfully concealing a person known to have been kidnapped may be inquired into or tried by the Court within the local limits of whose jurisdiction the wrongful concealing, or by the Court within the local limits of whose jurisdiction the kidnapping took place.

181. (1) The offence of being a thug, of being a thug and committing murder, of being a thug and committing murder, of dacoity, of dacoity with murder, of having belonged to a gang of dacoits, escape from custody, &c. a gang of dacoits, or of having escaped from custody, may be inquired into or tried by a Court within the local limits of whose jurisdiction the person charged is.

(2) The offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within the local limits of whose jurisdiction any part of the property which is the subject of the offence was received or retained by the accused person, or the offence was committed.

(3) The offence of stealing anything may be inquired into or tried by a Court within the local limits of whose jurisdiction such thing was stolen or was possessed by the thief, or by any person who received or retained the same knowing or having reason to believe it to be stolen.

(4) The offence of kidnapping or abduction may be inquired into or tried by a Court within the local limits of whose jurisdiction the person kidnapped or abducted was kidnapped or abducted, or was conveyed or concealed or detained.

Place of inquiry or trial where scene of offence is uncertain,

r not in one district only,

182. When it is uncertain in which of several local areas an offence was committed, or

where an offence is committed partly in one local area and partly in another, or

where an offence is a continuing one, and continues to be
or where offence is continuing, committed in more local areas than
one, or

or consists of several acts. where it consists of several acts
done in different local areas,
it may be inquired into or tried by a Court having jurisdiction
over any of such local areas.

183. An offence committed whilst the offender is in the
Offence committed on a course of performing a journey or voy-
journey. age may be inquired into or tried by a
Court through or into the local limits of whose jurisdiction the
offender, or the person against whom, or the thing in respect of
which, the offence was committed, passed in the course of that
journey or voyage.

184. All offences against the provisions of any law for the
time being in force relating to Rail-
Offences against Railway, Telegraph, Post-office, and ways,* Telegraphs,† the Post-office, ‡ or
Arms Acts. Arms and Ammunition§ may be in-
quired into or tried in a presidency-town, whether the offence is
stated to have been committed within such town or not :

Provided that the offender and all the witnesses necessary
for his prosecution are to be found within such town.

185. (1) Whenever any doubt arises as to the Court by which
any offence should, under the preceding
High Court to decide, in case of doubt, district where provisions of this chapter, be inquired
inquiry or trial shall take into or tried, the High Court, within the
place. local limits of whose appellate criminal
jurisdiction the offender actually is, may decide by which Court
the offence shall be inquired into or tried.||

* See the Indian Railways Act (IX. of 1890).

† See the Indian Telegraphs Act (XIII. of 1885).

‡ See the Indian Post-office Act (VI. of 1898).

§ See the Indian Arms Act (XI. of 1878).

|| Section 185, sub-section (2), has been repealed by the Lower Burma
Courts Act (VI. of 1900), Sch. II. The sub-section ran as follows: "(2)
In Lower Burma, when the offender is an European British subject, the Court
of the Recorder of Rangoon, and, in all other cases, the Court of the Judicial
Commissioner, shall, for the purposes of this section, be deemed to be the
High Court."

186 (1) When a Presidency Magistrate, a District Magistrate, a Sub-divisional Magistrate, or, if he is specially empowered in this behalf by the Local Government, a Magistrate of the first class, sees reason to believe that any person within the local limits of his jurisdiction has committed without such limits (whether within or without British India) an offence which cannot, under the provisions of sections 177 to 184 (both inclusive) or any other law for the time being in force, be inquired into or tried within such local limits, but is, under some law for the time being in force, triable in British India, such Magistrate may inquire into the offence as if it had been committed within such local limits, and Magistrate's procedure on arrest. compel such person in manner hereinbefore provided to appear before him, and send such person to the Magistrate having jurisdiction to inquire into or try such offence, or, if such offence is bailable, take a bond, with or without sureties, for his appearance before such Magistrate.

(2) When there are more Magistrates than one having such jurisdiction, and the Magistrate acting under this section cannot satisfy himself as to the Magistrate to or before whom such person should be sent or bound to appear, the case shall be reported for the orders of the High Court.

187. (1) If the person has been arrested under a warrant issued under section 186 by a Magistrate other than a Presidency Magistrate or District Magistrate, such Magistrate shall send the person arrested to the District or Sub-divisional Magistrate to whom he is subordinate, unless the Magistrate having jurisdiction to inquire into or try such offence issues his warrant for the arrest of such person, in which case the person arrested shall be delivered to the police-officer executing such warrant, or shall be sent to the Magistrate by whom such warrant was issued.

(2) If the offence which the person arrested is alleged or suspected to have committed is one which may be inquired into or tried by any Criminal Court in the same district other than that of the Magistrate acting under section 186, such Magistrate shall send such person to such Court.

Liability of British subjects for offences committed out of British India.

188. When a Native Indian subject or Her Majesty commits an offence at any place without and beyond the limits of British India, or

when any British subject commits an offence in the territories of any Native Prince or Chief in India, or

when a servant of the Queen (whether a British subject or not) commits an offence in the territories of any Native Prince or Chief in India,

he may be dealt with in respect of such offence as if it had been committed at any place within British India at which he may be found :

Provided that no charge as to any such offence shall be inquired into in British India unless the Political Agents to certify fitness of inquiry into charge. Political Agent, if there is one, for the territory in which the offence is alleged to have been committed, certifies that, in his opinion, the charge ought to be inquired into in British India ; and, where there is no Political Agent, the sanction of the Local Government shall be required :

Provided, also, that any proceedings taken against any person under this section which would be a bar to subsequent proceedings against such person for the same offence if such offence had been committed in British India shall be a bar to further proceedings against him under the Foreign Jurisdiction and Extradition Act, 1879,* in respect of the same offence in any territory beyond the limits of British India.

189. Whenever any such offence as is referred to in section 188 is being inquired into or tried, the Power to direct copies of depositions and exhibits to Local Government may, if it thinks fit, be received in evidence. direct that copies of depositions made or exhibits produced before the Political Agent or a judicial officer in or for the territory in which such offence is alleged to have been committed, shall be received as evidence by the Court holding such inquiry or trial in any case in which such Court might issue a commission for taking evidence as to the matters to which such depositions or exhibits relate.

B.—Conditions requisite for Initiation of Proceedings.

190. (1) Except as hereinafter provided, any Presidency Magistrate, District Magistrate, or Sub-Magistrates. divisional Magistrate, and any other Magistrate specially empowered in this behalf, may take cognizance of any offence—

* Act XXI. of 1879. See now Act XV. of 1903.

- (a) upon receiving a complaint of facts which constitute such offence ;
- (b) upon a police-report of such facts ;
- (c) upon information received from any person other than a police-officer, or upon his own knowledge or suspicion, that such offence has been committed.

(2) The Local Government, or the District Magistrate subject to the general or special orders of the Local Government, may empower any Magistrate to take cognizance under sub-section (1), clause (a) or clause (b), of offences for which he may try or commit for trial.

(3) The Local Government may empower any Magistrate of the first or second class to take cognizance under sub-section (1), clause (c), of offences for which he may try or commit for trial.

191. When a Magistrate takes cognizance of an offence under sub-section (1), clause (c), of the preceding section, the accused shall, before any evidence is taken, be informed that he is entitled to have the case tried by another Court, and, if the accused, or any of the accused if there be more than one, objects to being tried by such Magistrate, the case shall, instead of being tried by such Magistrate, be committed to the Court of Session, or transferred to another Magistrate.

192. (1) Any Chief Presidency Magistrate, District Magistrate, or Sub-divisional Magistrate may transfer any case, of which he has taken cognizance, for inquiry or trial, to any Magistrate subordinate to him.

(2) Any District Magistrate may empower any Magistrate of the first class who has taken cognizance of any case to transfer it for inquiry or trial to any other specified Magistrate in his district who is competent under this Code to try the accused, or commit him for trial ; and such Magistrate may dispose of the case accordingly.

193. (1) Except as otherwise expressly provided by this Code, or by any other law for the time being in force, no Court of Session* shall take Cognizance of offences by Courts of Session.

* As to procedure of Courts of Session in Upper Burma, see the Upper Burma Criminal Justice Regulation (V of 1892), Sch., s. II. (3) (b). This procedure, however, does not affect the Code in its application to European British subjects in Upper Burma.—See s. XVII. *ibid.*

cognizance of any offence as a Court of original jurisdiction unless the accused has been committed to it by a Magistrate duly empowered in that behalf.

(2) Additional Sessions Judges and Assistant Sessions Judges shall try such cases only as the Local Government, by general or special order, may direct them to try, or, in the case of Assistant Sessions Judges, as the Sessions Judge of the division, by general or special order, may make over to them for trial.

194. (1) The High Court may take cognizance of any offence
Cognizance of offences by High Court. upon a commitment made to it in manner hereinafter provided.

Nothing herein contained shall be deemed to affect the provisions of any Letters Patent granted under the Indian High Courts Act, 1861,* or any other provision of this Code.

(2) (a) Notwithstanding anything in this Code contained, the
Informations by Advocate-General. Advocate-General may, with the previous sanction of the Governor-General in Council or the Local Government, exhibit to the High Court, against persons subject to the jurisdiction of the High Court, informations for all purposes for which Her Majesty's Attorney-General may exhibit informations on behalf of the Crown in the High Court of Justice in England.

(b) Such proceedings may be taken upon every such information as may lawfully be taken in the case of similar informations filed by Her Majesty's Attorney-General, so far as the circumstances of the case and the practice and procedure of the said High Court will admit.

(c) All fines, penalties forfeitures, debts, and sums of money recovered or levied under or by virtue of any such information shall belong to the Government of India.

(d) The High Court may make rules for carrying into effect the provisions of this section.

195. (1) No Court shall take cognizance—

(a) of any offence punishable under sections 172 to 188 (both
Prosecution for contempts of lawful authority of public servants. inclusive) of the Indian Penal Code,† except with the previous sanction, or on the complaint, of the public servant concerned, or of some public servant to whom he is subordinate ;

* Stat. 24 & 25 Vict., c. 104.

† Act XLV. of 1860.

(b) of any offence punishable under section 193, 194, 195,

Prosecution for certain offences against public justice. 196, 199, 200, 205, 206, 207, 208, 209, 210, 211, or 228 of the same Code,* when such offence is committed in, or in relation to any proceeding in, any Court, except with the previous sanction, or on the complaint, of such Court, or of some other Court to which such Court is subordinate ;

(c) of any offence described in section 463, or punishable

Prosecution for certain offences relating to documents given in evidence. under section 471, 475, or 476, of the same Code,* when such offence has been committed by a party to any proceeding in any Court in respect of a document produced or given in evidence in such proceeding, except with the previous sanction, or on the complaint, of such Court, or of some other Court to which such Court is subordinate.

(2) In clauses (b) and (c) of sub-section (1), the term " Court " means a Civil, Revenue, or Criminal Court, but does not include a Registrar or Sub-Registrar under the Indian Registration Act 1877.†

(3) The provisions of sub-section (1) with reference to the offences named therein apply also to the abetment of such offences and attempts to commit them.

(4) The sanction referred to in this section may be expressed in general terms, and need not name the accused person ; but it shall, so far as practicable, specify the Court or other place in which, and the occasion on which, the offence was committed.

(5) When sanction is given in respect of any offence referred to in this section, the Court taking cognizance of the case may frame a charge of any other offence so referred to which is disclosed by the facts.

(6) Any sanction given or refused under this section may be revoked or granted by any authority to which the authority giving or refusing it is subordinate ; and no sanction shall remain in force for more than six months from the date on which it was given, provided that the High Court may, for good cause shown, extend the time,

* The Indian Penal Code (Act XLV. of 1860).

† New Act XVI. of 1908.—See s. 93 and the Schedule thereof.

(7) For the purposes of this section, every Court shall be deemed to be subordinate only to the Court to which appeals from the former Court ordinarily lie, that is to say—

- (a) where such appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate ;
- (b) where such appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case in connection with which the offence is alleged to have been committed ;
- (c) where no appeal lies, such Court shall be deemed to be subordinate to the principal Court of original jurisdiction within the local limits of whose jurisdiction such first-mentioned Court is situate.

196. No Court shall take cognizance of any offence punishable under Chapter VI. of the Indian Penal Code* (except section 127), or punishable under section 108A. or section 153A, or section 294A or section 505 of the same Code, unless upon complaint made by order of, or under authority from, the Governor-General in Council, the Local Government, or some officer empowered by the Governor-General in Council in this behalf.

197. (1) When any Judge, or any public servant not removable from his office without the sanction of the Government of India or the Local Government, is accused as such Judge or public servant of any offence, no Court shall take cognizance of such offence except with the previous sanction of the Government having power to order his removal, or of some officer empowered in this behalf by such Government, or of some Court or other authority to which such Judge or public servant is subordinate, and whose power to give such sanction has not been limited by such Government.

(2) Such Government may determine the person by whom, the manner in which the offence or offences for which, the prosecution of such Judge or public servant is to be conducted, and may specify the Court before which the trial is to be held.

* Act XLV. of 1860.

198. No Court shall take cognizance of an offence falling under Chapter XIX. or Chapter XXI. of the Indian Penal Code,* or under sections 493 to 496 (both inclusive) of the same Code, except upon a complaint made by some person aggrieved by such offence.

199. No Court shall take cognizance of an offence under section 497 or section 498 of the Indian Penal Code* except upon a complaint made by the husband of the woman, or, in his absence, by some person who had care of such woman on his behalf at the time when such offence was committed.

CHAPTER XVI

OF COMPLAINTS TO MAGISTRATES.

200. Subject to the provisions of section 476, a Magistrate taking cognizance of an offence on complaint shall at once examine the complainant upon oath, and the substance of the examination shall be reduced to writing, and shall be signed by the complainant, and also by the Magistrate ;

Provided as follows—

- (a) when the complaint is made in writing, nothing herein contained shall be deemed to require a Magistrate to examine the complainant before transferring the case under section 192 ;
- (b) where the Magistrate is a Presidency Magistrate, such examination may be on oath or not as the Magistrate in each case thinks fit, and need not be reduced to writing ; but the Magistrate may, if he thinks fit, before the matter of the complaint is brought before him, require it to be reduced to writing ;
- (c) when the case has been transferred under section 192, and the Magistrate so transferring it has already examined the complainant, the Magistrate to whom it is so transferred shall not be bound to re-examine the complainant.

* Act XLV. of 1860.

201. (1) If the complaint has been made in writing to a Magistrate who is not competent to take cognizance of the case, he shall return the complaint for presentation to the proper Court with an endorsement to that effect.

(2) If the complaint has not been made in writing, such Magistrate shall direct the complainant to the proper Court.

202. (1) If the Chief Presidency Magistrate, or any other Presidency Magistrate whom the Local Government may from time to time authorize in this behalf, or any Magistrate of the first or second class, is not satisfied as to the truth of a complaint of an offence of which he is authorized to take cognizance, he may, when the complainant has been examined, record his reasons, and may then postpone the issue or process for compelling the attendance of the person complained against, and either inquire into the case himself, or direct a previous local investigation to be made by any officer subordinate to such Magistrate, or by a police-officer, or by such other person, not being a Magistrate or police-officer, as he thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint.

(2) If such investigation is made by some person not being a Magistrate or a police-officer, he shall exercise all the powers conferred by this Code on an officer in charge of a police-station except that he shall not have power to arrest without warrant.

(3) This section applies also to the police in the towns of Calcutta and Bombay.

203. The Magistrate before whom a complaint is made, or to whom it has been transferred, may dismiss the complaint if, after examining the complainant, and considering the result of the investigation (if any) made under section 202, there is, in his judgment, no sufficient ground for proceeding.* In such case he shall briefly record his reasons for so doing.

* See the Indian Penal Code (Act XLV. of 1860), s. 95.

CHAPTER XVII.

OF THE COMMENCEMENT OF PROCEEDINGS.
BEFORE MAGISTRATES.

204. (1) If, in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, and the case appears to be one in which, according to the fourth column of the second Schedule, a summons should issue in the first instance, he shall issue his summons for the attendance of the accused. If the case appears to be one in which, according to that column, a warrant should issue in the first instance, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has not jurisdiction himself) some other Magistrate having jurisdiction.

(2) Nothing in this section shall be deemed to affect the provisions of section 90.

(3) When, by any law for the time being in force, any process-fees or other fees are payable, no process shall be issued until the fees are paid, and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

205. (1) Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused, and permit him to appear by his pleader.

Magistrate may dispense with personal attendance of accused.

(2) But the Magistrate inquiring into or trying the case may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in manner hereinbefore provided.

CHAPTER XVIII.*

OF INQUIRY INTO CASES TRIABLE BY THE COURT OF
SESSIONS OR HIGH COURT.

206. (1) Subject to the provisions of section 443, any Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, or Magistrate of the first class or any Magistrate empowered in this behalf by the Local Government, may commit any person for trial to the Court of Session or High Court for any offence triable by such Court.

(2) But, save as herein otherwise provided, no person triable by the Court of Session shall be committed for trial to the High Court.

207. The following procedure shall be adopted in inquiries before Magistrates where the case is triable exclusively by a Court of Session or High Court, or, in the opinion of the Magistrate, ought to be tried by such Court:—

208. (1) The Magistrate shall, when the accused appears or is brought before him, proceed to hear the complainant (if any), and take in manner hereinafter provided all such evidence as may be produced in support of the prosecution or in behalf of the accused, or as may be called for by the Magistrate.

(2) The accused shall be at liberty to cross-examine the witnesses for the prosecution, and, in such case, the prosecutor may re-examine them.

(3) If the complainant or officer conducting the prosecution or the accused applies to the Magistrate to issue process to compel the attendance of any witness or the production of any document or thing, the Magistrate shall issue such process unless, for reasons to be recorded, he deems it unnecessary to do so.

(4) Nothing in this section shall be deemed to require a Presidency Magistrate to record his reasons.

209. (1) When the evidence referred to in section 208, sub-sections (1) and (3), has been taken, and he has (if necessary) examined the accused

* Magistrates exercising jurisdiction in the Town of Rangoon, when committing prisoners for trial, commit them to the Chief Court.—See s. 13 of the Lower Burma Courts Act (VI, of 1900).

for the purpose of enabling him to explain any circumstances appearing in the evidence against him, such Magistrate shall, if he finds that there are not sufficient grounds for committing the accused person for trial, record his reasons and discharge him, unless it appears to the Magistrate that such person should be tried before himself or some other Magistrate, in which case he shall proceed accordingly.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

210. (1) When, upon such evidence being taken and such examination (if any) being made, the Magistrate is satisfied that there are sufficient grounds for committing the accused for trial, he shall frame a charge under his hand, declaring with what offence the accused is charged.

(2) As soon as the charge has been framed, it shall be read and explained to the accused, and a copy thereof shall, if he so requires, be given to him free of cost.

211. (1) The accused shall be required at once to give in, orally or in writing, a list of the persons (if any) whom he wishes to be summoned to give evidence on his trial.

(2) The Magistrate may, in his discretion, allow the accused to give in any further list of witnesses at a subsequent time; and, where the accused is committed for trial before the High Court, nothing in this section shall be deemed to preclude the accused from giving, at any time before his trial, to the Clerk of the Crown a further list of the persons whom he wishes to be summoned to give evidence on such trial.

212. The Magistrate may, in his discretion, summon and examine any witness named in any list given in to him under section 211.

213. (1) When the accused, on being required to give in a list under section 211, has declined to do so, or when he has given in such list, and the witnesses (if any) included therein whom the Magistrate desires to examine have been summoned and examined under

section 212, the Magistrate may make an order committing the accused for trial by the High Court or the Court of Session (as the case may be), and (unless the Magistrate is a Presidency Magistrate) shall also record briefly the reasons for such commitment.

(2) If the Magistrate, after hearing the witnesses for the defence is satisfied that there are not sufficient grounds for committing the accused, he may cancel the charge, and discharge the accused.

214. If any person (not being an European British subject) Person charged outside is accused before a Magistrate other than presidency-towns jointly with a Presidency Magistrate of having committed an offence conjointly with an European British subject, who is about to be committed for trial, or to be tried before the High Court, on a similar charge arising out of the same transaction, and the Magistrate finds that there are sufficient grounds for committing the accused for trial, he shall commit him for trial before the High Court, and not before the Court of Session.

215. A commitment once made under section 213 or section Quashing commitments 214 by a competent Magistrate or by a Court of Session under section 477, or by a Civil or Revenue Court under section 478, can be quashed by the High Court only, and only on a point of law.

216. When the accused has given in any list of witnesses Summons to witnesses for under section 211, and has been committed for trial, the Magistrate shall summon such of the witnesses included in the list as have not appeared before himself to appear before the Court to which the accused has been committed:

Provided that, where the accused has been committed to the High Court, the Magistrate may, in his discretion, leave such witnesses to be summoned by the Clerk of the Crown, and such witnesses may be summoned accordingly:

Provided, also, that, if the Magistrate thinks that any witness is included in the list for the purpose of Refusal to summon unnecessary witness unless vexation or delay, or of defeating the deposit made. ends of justice, the Magistrate may require the accused to satisfy him that there are reasonable grounds for believing that the evidence of such witness is material, and, if he is not so satisfied, may refuse to summon the witness (recording his reasons for such refusal), or may, before summoning him,

require such sum to be deposited as such Magistrate thinks necessary to defray the expense of obtaining the attendance of the witness and all other proper expenses.

217. (1) Complainants and witnesses for the prosecution and defence, whose attendance before the Court of Session or High Court is necessary, and who appear before the Magistrate, shall execute before him bonds binding themselves to be in attendance when called upon at the Court of Session or High Court to prosecute or to give evidence, as the case may be.

(2) If any complainant or witness refuses to attend before the Court of Session or High Court, or Detention in custody in case of refusal to attend or to execute bond. execute the bond above directed, the Magistrate may detain him in custody until he executes such bond, or until his attendance at the Court of Session or High Court is required, when the Magistrate shall send him in custody to the Court of Session or High Court, as the case may be.

218. (1) When the accused is committed for trial, the Magistrate shall issue an order* to such person as may be appointed by the Local Government in this behalf, notifying the commitment, and stating the offence in the same form as the charge, unless the Magistrate is satisfied that such person is already aware of the commitment and the form of the charge;

and shall send the charge, the record of the inquiry, and any Charge, &c., to be forwarded to High Court or Court of Session. weapon or other thing which is to be produced in evidence, to the Court of Session or (where the commitment is made to the High Court) to the Clerk of the Crown, or other officer appointed in this behalf by the High Court.

(2) When the commitment is made to the High Court, and English translation to be forwarded to High Court. any part of the record is not in English, an English translation of such part shall be forwarded with the record.

219. (1) The Magistrate may, if he thinks fit, summon and examine supplementary witnesses after the commitment and before the com-

* See Sch. V., Form XXVII., *infra*.

mencement of the trial, and bind them over in manner hereinbefore provided to appear and give evidence.

(2) Such examination shall, if possible, be taken in the presence of the accused, and, where the Magistrate is not a Presidency Magistrate, a copy of the evidence of such witnesses shall, if the accused so requires, be given to him free of cost.

220. Until and during the trial, the Magistrate shall subject to the provisions of this Code regarding the taking of bail,* commit the accused, by warrant, to custody.

CHAPTER XIX.

OF THE CHARGE.

Form of Charges.†

221. (1) Every charge under this Code shall state the offence with which the accused is charged.

(2) If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.

(3) If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged.

(4) The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.

(5) The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

(6) In the presidency-towns the charge shall be written in English; elsewhere it shall be written either in English, or in the language of the Court.

* See Ch. XXXIX., *infra*.

† See Sch. V., Form XXVIII., *infra*.

(7) If the accused has been previously convicted of any offence, and it is intended to prove such previous conviction when the accused is to be set out. previous conviction for the purpose of affecting the punishment which the Court is competent to award,* the fact, date, and place of the previous conviction shall be stated in the charge. If such statement is omitted, the Court may add it at any time before sentence is passed.

Illustrations.

(a.) *A* is charged with the murder of *B*: This is equivalent to a statement that *A*'s act fell within the definition of murder given in sections 299 and 300 of the Indian Penal Code;† that it did not fall within any of the General Exceptions of the same Code; and that it did not fall within any of the five Exceptions to section 300; or that, if it did fall within Exception I., one or other of the three provisos to that Exception applied to it.

(b.) *A* is charged, under section 326 of the Indian Penal Code,† with voluntarily causing grievous hurt to *B* by means of an instrument for shooting: This is equivalent to a statement that the case was not provided for by section 335 of the Indian Penal Code,† and that the General Exceptions did not apply to it.

(c.) *A* is accused of murder, cheating, theft, extortion, adultery, or criminal intimidation, or using a false property-mark: The charge may state that *A* committed murder, or cheating, or theft, or extortion, or adultery, or criminal intimidation, or that he used a false property-mark, without reference to the definitions of those crimes contained in the Indian Penal Code;† but the sections under which the offence is punishable must, in each instance, be referred to in the charge.

(d.) *A* is charged, under section 184 of the Indian Penal Code,† with intentionally obstructing a sale of property offered for sale by the lawful authority of a public servant: The charge should be in those words.

222. (1) The charge shall contain such particulars as to the Particulars as to time, time and place of the alleged offence, place, and person. and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

(2) When the accused is charged with criminal breach of trust or dishonest misappropriation of money, it shall be sufficient to specify the gross sum in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have

* See the Indian Penal Code (Act XLV. of 1860), s 75; see the Whipping Act (VI. of 1864) ss. 3 and 4. See now Act IV. of 1909. See also, *infra*, ss. 310, 348, and 511.

† Act XLV. of 1860.

been committed, without specifying particular items or exact dates; and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 234 :

Provided that the time included between the first and last of such dates shall not exceed one year.

223. When the nature of the case is such that the particulars

When manner of committing offence must be stated. mentioned in sections 221 and 222 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.

Illustrations.

(a.) *A* is accused of the theft of a certain article at a certain time and place : The charge need not set out the manner in which the theft was effected.

(b.) *A* is accused of cheating *B* at a given time and place : The charge must set out the manner in which *A* cheated *B*.

(c.) *A* is accused of giving false evidence at a given time and place : The charge must set out that portion of the evidence given by *A* which is alleged to be false.

(d.) *A* is accused of obstructing *B*, a public servant, in the discharge of his public functions at a given time and place : The charge must set out the manner in which *B* obstructed *B* in the discharge of his functions.

(e.) *A* is accused of the murder of *B* at a given time and place : The charge need not state the manner in which *A* murdered *B*.

(f.) *A* is accused of disobeying a direction of the law with intent to save *B* from punishment : The charge must set out the disobedience charged and the law infringed.

224. In every charge words used in describing an offence shall be deemed to have been used in the sense attached to them respectively by the law under which such offence is punishable.

Words in charge taken in sense of law under which offence is punishable.

225. No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice.

Effect of errors.

Illustrations.

(a.) *A* is charged, under section 242 of the Indian Penal Code,* with "having been in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit," the word "fraudulently" being omitted in the charge: Unless it appears that *A* was in fact misled by this omission, the error shall not be regarded as material.

(b.) *A* is charged with cheating *B*, and the manner in which he cheated *B* is not set out in the charge, or is set out incorrectly. *A* defends himself, calls witnesses, and gives his own account of the transaction: The Court may infer from this that the omission to set out the manner of the cheating is not material.

(c.) *A* is charged with cheating *B*, and the manner in which he cheated *B* is not set out in the charge. There were many transactions between *A* and *B*, and *A* had no means of knowing to which of them the charge referred, and offered no defence: The Court may infer from such facts that the omission to set out the manner of the cheating was, in this case, a material error.

(d.) *A* is charged with the murder of Khoda Baksh on the 21st January 1882. In fact, the murdered person's name was Haidar Baksh, and the date of the murder was the 20th January 1882. *A* was never charged with any murder but one, and had heard the inquiry before the Magistrate, which referred exclusively to the case of Haidar Baksh: The Court may infer from these facts that *A* was not misled, and that the error in the charge was immaterial.

(e.) *A* was charged with murdering Haidar Baksh on the 20th January 1882, and Khoda Baksh (who tried to arrest him for that murder) on the 21st January 1882. When charged for the murder of Haidar Baksh, he was tried for the murder of Khoda Baksh. The witnesses present in his defence were witnesses in the case of Haidar Baksh: The Court may infer from this that *A* was misled, and that the error was material.

226. When any person is committed for trial without a charge, or with an imperfect or erroneous charge, the Court, or, in the case of a High Court, the Clerk of the Crown, may frame a charge, or add to or otherwise alter the charge, as the case may be, having regard to the rules contained in this Code as to the form of charges.

Illustrations.

(1.) *A* is charged with the murder of *C*: A charge of abetting the murder of *C* may be added or substituted.

(2.) *A* is charged with forging a valuable security under section 467 of the Indian Penal Code:* A charge of fabricating false evidence under section 193 may be added.

(3.) A is charged with receiving stolen property knowing it to be stolen. During the trial it incidentally appears that he has in his possession instruments for the purpose of counterfeiting coin : A charge under section 235 of the Indian Penal Code* cannot be added.

227. (1) Any Court may alter or add to any charge at any time before judgment is pronounced, or, Court may alter charge. in the case of trials before the Court of Session or High Court, before the verdict of the jury is returned, or the opinions of the assessors are expressed.

(2) Every such alteration or addition shall be read and explained to the accused.

228. If the charge framed, or alteration or addition made When trial may proceed under section 226 or section 227, is immediately after alteration. such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may, in its discretion, after such charge or alteration or addition has been framed or made, proceed with the trial as if the new or altered charge had been the original charge.

229. If the new or altered or added charge is such that proceeding immediately with the trial is directed, or trial suspended. likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial, or adjourn the trial for such period as may be necessary.

230. If the offence stated in the new or altered* or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with, until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the new or altered charge is founded.

231. Whenever a charge is altered or added to by the Court Recall of witnesses when after the commencement of the trial, the charge altered. prosecutor and the accused shall be allowed to recall or re-summon, and examine with reference to such alteration or addition, any witness who may have been examined, and also to call any further witness whom the Court may think to be material.

* Act XLV. of 1860.

232. (1) If any appellate Court, or the High Court in the exercise of its powers of revision, or of its powers under Chapter XXVII., is of opinion that any person convicted of an offence was misled in his defence by the absence of a charge, or by an error in the charge, it shall direct a new trial to be had upon a charge framed in whatever manner it thinks fit.

(2) If the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction.

Illustration.

A is convicted of an offence, under section 196 of the Indian Penal Code,* upon a charge which omits to state that he knew the evidence, which he corruptly used or attempted to use as true or genuine, was false or fabricated. If the Court thinks it probable that *A* had such knowledge, and that he was misled in his defence by the omission from the charge of the statement that he had it, it shall direct a new trial upon an amended charge, but, if it appears probable from the proceedings that *A* had no such knowledge, it shall quash the conviction.

Joinder of Charges.

233. For every distinct offence of which any person is accused, there shall be a separate charge, and every such charge shall be tried separately, except in the cases mentioned in sections 234, 235, 236, and 239.

Illustration.

A is accused of a theft on one occasion, and of causing grievous hurt on another occasion: *A* must be separately charged and separately tried for the theft and causing grievous hurt.

234. (1) When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, he may be charged with, and tried at one trial for, any number of them not exceeding three.

(2) Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code,* or of any special or local law.

* Act XLV. of 1860.

235. (1) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

(2) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.

(3) If several acts, of which one or more than one would, by itself or themselves, constitute an offence, constitute, when combined, a different offence, the person accused of them may be charged with, and tried at one trial for, the offence constituted by such acts when combined, and for any offence constituted by any one or more of such acts.

(4) Nothing contained in this section shall affect the Indian Penal Code,* section 71.

Illustrations—

to sub-section (1) :

(a.) *A* rescues *B*, a person in lawful custody, and in so doing, causes grievous hurt to *C*, a constable in whose custody *B* was : *A* may be charged with, and convicted of, offences under sections 225 and 333 of the Indian Penal Code.*

(b.) *A* commits house-breaking by day with intent to commit adultery, and commits, in the house so entered, adultery with *B*'s wife. *A* may be separately charged with, and convicted of, offences under sections 454 and 497 of the Indian Penal Code.*

(c.) *A* entices *B*, the wife of *C*, away from *C*, with intent to commit adultery with *B*, and then commits adultery with her : *A* may be separately charged with, and convicted of, offences under sections 498 and 497 of the Indian Penal Code.*

(d.) *A* has in his possession several seals, knowing them to be counterfeit, and intending to use them for the purpose of committing several forgeries punishable under section 466 of the Indian Penal Code :* *A* may be separately charged with, and convicted of, the possession of each seal under section 473 of the Indian Penal Code.*

(e.) With intent to cause injury to *B*, *A* institutes a criminal proceeding against him, knowing that there is no just or lawful ground for such proceeding ; and also falsely accuses *B* of having committed an offence,

* Act XLV. of 1860.

knowing that there is no just or lawful ground for such charges : *A* may be separately charged with, and convicted of, two offences under section 211 of the Indian Penal Code.*

(*f.*) *A*, with intent to cause injury to *B*, falsely accuses him of having committed an offence, knowing that there is no just or lawful ground for such charge. On the trial, *A* gives false evidence against *B*, intending thereby to cause *B* to be convicted of a capital offence : *A* may be separately charged with, and convicted of, offences under sections 211 and 194 of the Indian Penal Code.*

(*g.*) *A*, with six others, commits the offences of rioting, grievous hurt, and assaulting a public servant endeavouring, in the discharge of his duty as such, to suppress the riot : *A* may be separately charged with, and convicted of, offences under sections 147, 325, and 152 of the Indian Penal Code.*

(*h.*) *A* threatens *B*, *C*, and *D* at the same time with injury to their persons with intent to cause alarm to them : *A* may be separately charged with, and convicted of, each of the three offences under section 506 of the Indian Penal Code.*

The separate charges referred to in *Illustrations (a) to (h)* respectively may be tried at the same time.

to sub-section (2) :

(*i.*) *A* wrongfully strikes *B* with a cane : *A* may be separately charged with, and convicted of, offences under sections 352 and 323 of the Indian Penal Code.*

(*j.*) Several stolen sacks of corn are made over to *A* and *B*, who know they are stolen property, for the purpose of concealing them. *A* and *B* thereupon voluntarily assist each other to conceal the sacks at the bottom of a grain-pit : *A* and *B* may be separately charged with, and convicted of, offences under sections 411 and 414 of the Indian Penal Code.*

(*k.*) *A* exposes her child with the knowledge that she is thereby likely to cause its death. The child dies in consequence of such exposure : *A* may be separately charged with, and convicted of, offences under sections 317 and 304 of the Indian Penal Code.*

(*l.*) *A* dishonestly uses a forged document as genuine evidence in order to convict *B* a public servant of an offence under section 167 of the Indian Penal Code :* *A* may be separately charged with, and convicted of, offences under sections 471 (read with 466) and 196 of the same Code.*

to sub-section (3) :

(*m.*) *A* commits robbery on *B*, and, in doing so, voluntarily causes hurt to him : *A* may be separately charged with, and convicted of, offences under sections 323, 392, and 394 of the Indian Penal Code.*

236. If a single act or series of acts is of such a nature

Where it is doubtful what that it is doubtful which of several offences has been committed. fences the facts which can be proved will

constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.

Illustrations.

(a.) *A* is accused of an act which may amount to theft, or receiving stolen property, or criminal breach of trust or cheating: He may be charged with theft, receiving stolen property, criminal breach of trust, and cheating, or he may be charged with having committed theft, or receiving stolen property, or criminal breach of trust, or cheating.

(b.) *A* states on oath before the Magistrate that he saw *B* hit *C* with a club. Before the Sessions Court *A* states on oath that *B* never hit *C*. *A* may be charged in the alternative and convicted of intentionally giving false evidence, although it cannot be proved which of these contradictory statements was false.

237. (1) If, in the case mentioned in section 236, the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of that section, he may be convicted of the offence which he is shown to have committed although he was not charged with it.

(2) When the accused is charged with an offence, he may be convicted of having attempted to commit that offence, although the attempt is not separately charged.

Illustration.

A is charged with theft. It appears that he committed the offence of criminal breach of trust or that of receiving stolen goods: He may be convicted of criminal breach of trust or of receiving stolen goods (as the case may be) though he was not charged with such offence.

238. (1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence though he was not charged with it.

(2) When a person is charged with an offence, and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence although he is not charged with it.

(3) Nothing in this section shall be deemed to authorize a conviction of any offence referred to in section 198 or section 199 when no complaint has been made as required by that section.

Illustrations.

(a.) *A* is charged, under section 407 of the Indian Penal Code,* with criminal breach of trust in respect of property entrusted to him as a carrier. It appears that he did commit criminal breach of trust under section 406 in respect of the property, but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under section 406.

(b.) *A* is charged, under section 325 of the Indian Penal Code,* with causing grievous hurt. He proves that he acted on grave and sudden provocation: He may be convicted under section 335 of that Code.*

239. When more persons than one are accused of the same offence, or of different offences committed in the same transaction, or when one person is accused of committing any offence, and another of abetment of, or attempt to commit, such offence, they may be charged and tried together or separately, as the Court thinks fit; and the provisions contained in the former part of this chapter shall apply to all such charges.

Illustrations.

(a.) *A* and *B* are accused of the same murder: *A* and *B* may be charged and tried together for the murder.

(b.) *A* and *B* are accused of a robbery, in the course of which *A* commits a murder with which *B* has nothing to do: *A* and *B* may be tried together on a charge, charging both of them with the robbery, and *A* alone with the murder.

(c.) *A* and *B* are both charged with a theft, and *B* is charged with two other thefts committed by him in the course of the same transaction: *A* and *B* may be both tried together on a charge charging both with the one theft, and *B* alone with the two other thefts.

240. When a charge containing more heads than one is framed against the same person, and when a conviction has been had on one or more of them, the complainant, or the officer conducting the prosecution, may, with the consent of the Court, withdraw the remaining charge or charges, or the Court, of its own accord, may stay the inquiry into, or trial of, such charge or charges. Such withdrawal shall have the effect of an acquittal on

* Act XLV. of 1860.

such charge or charges, unless the conviction be set aside, in which case the said Court (subject to the order of the Court setting aside the conviction) may proceed with the inquiry into, or trial of, the charge or charges so withdrawn.

CHAPTER XX.

OF THE TRIAL OF SUMMONS-CASES BY MAGISTRATES.

Procedure in summons-cases.

241. The following procedure shall be observed by Magistrates in the trial of summons-cases :—

242. When the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked if he has any cause to show why he should not be convicted ; but it shall not be necessary to frame a formal charge.*

243. If the accused admits that he has committed the offence of which he is accused, his admission shall be recorded as nearly as possible in the words used by him ; and, if he shows no sufficient cause why he should not be convicted, the Magistrate shall convict him accordingly.

244. (1) If the accused does not make such admission, the Magistrate shall proceed to hear the complainant (if any), and take all such evidence as may be produced in support of the prosecution, and also to hear the accused, and take all such evidence as he produces in his defence.

(2) The Magistrate may, if he thinks fit, on the application of the complainant or accused, issue process to compel the attendance of any witness or the production of any document or other thing.

(3) The Magistrate may, before summoning any witness on such application, require that his reasonable expenses, incurred in attending for the purposes of the trial, be deposited in Court.

* Except in the case of trials of European British subjects by District Magistrates, see s. 451 (4), *infra*.

245. (1) If the Magistrate, upon taking the evidence referred to in section 244 and such further evidence (if any) as he may, of his own motion, cause to be produced, and (if he thinks fit), examining the accused, finds the accused not guilty, he shall record an order of acquittal.

Sentence.

(2) If he finds the accused guilty, he shall pass sentence upon him according to law.*

246. A Magistrate may, under section 243 or section 245, convict the accused of any offence triable under this chapter which, from the facts admitted or proved, he appears to have committed, whatever may be the nature of the complaint or summons.

247. If the summons has been issued on complaint, and upon the day appointed for the appearance of the accused, or any day subsequent thereto, to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks proper to adjourn the hearing of the case to some other day:

Provided that, where the complainant is a public servant, and his personal attendance is not required, the Magistrate may dispense with his attendance, and proceed with the case.

248. If a complainant, at any time before a final order is passed in any case under this chapter, satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint, the Magistrate may permit him to withdraw the same, and shall thereupon acquit the accused.

249. In any case instituted otherwise than upon complaint, a Presidency Magistrate, a Magistrate of the first class, or, with the previous sanction of the District Magistrate, any other Magistrate, may, for reasons to be recorded by him stop the proceedings at any stage without pronouncing any judgment, either of acquittal or conviction, and may thereupon release the accused.

* See Sch. V., Form XXIX., *infra*.

Frivolous Accusations in Summons and Warrant Cases.

250. (1) If, in any case instituted by complaint as defined in this Code, or upon information given to a police-officer or to a Magistrate, a person is accused before a Magistrate of any offence triable by a Magistrate, and the Magistrate by whom the case is heard discharges or acquits the accused, and is satisfied that the accusation against him was frivolous or vexatious, the Magistrate may, in his discretion, by his order of discharge or acquittal, direct the person upon whose complaint or information the accusation was made, to pay to the accused, or to each of the accused where there are more than one, such compensation, not exceeding fifty rupees, as the Magistrate thinks fit:

Provided that, before making any such direction, the Magistrate shall—

- (a) record and consider any objection which the complainant or informant may urge against the making of the direction, and,
- (b) if the Magistrate directs any compensation to be paid, state in writing, in his order of discharge or acquittal, his reasons for awarding the compensation.

(2) Compensation of which a Magistrate has ordered payment under sub-section (1) shall be recoverable as if it were a fine:

Provided that, if it cannot be recovered, the imprisonment* to be awarded shall be simple, and for such term, not exceeding thirty days, as the Magistrate directs.

(3) A complainant or informant, who has been ordered, under sub-section (1), by a Magistrate of the second or third class, to pay compensation to an accused person, may appeal from the order, in so far as the order relates to the payment of the compensation, as if such complainant or informant had been convicted on a trial held by such Magistrate.

(4) Where an order for payment of compensation to an accused person is made in a case which is subject to appeal under sub-section (3), the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed, or, if an appeal is presented, before the appeal has been decided:

(5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any compensation paid or recovered under this section.

* See Sch. V., Form XXX., *infra*.

CHAPTER XXI.

OF THE TRIAL OF WARRANT-CASES BY MAGISTRATES.

251. The following procedure shall be observed by Magistrates in the trial of warrant-cases :

Procedure in warrant-cases.

252. (1) When the accused appears or is brought before a Magistrate, such Magistrate shall proceed to hear the complainant (if any), and take all such evidence as may be produced in support of the prosecution.

Evidence for prosecution.

(2) The Magistrate shall ascertain, from the complainant or otherwise, the names of any persons likely to be acquainted with the facts of the case, and to be able to give evidence for the prosecution, and shall summon* to give evidence before himself such of them as he thinks necessary.

253. (1) If, upon taking all the evidence referred to in section 252, and making such examination (if any) of the accused as the Magistrate thinks necessary, he finds that no case against the accused has been made out, which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

Discharge of accused.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

254.† If, when such evidence and examination have been taken and made, or at any previous stage of the case, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this chapter, which such Magistrate is competent to try, and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

Charge to be framed when offence appears proved.

255. (1) The charge shall then be read and explained to the accused, and he shall be asked whether he is guilty or has any defence to make.

Plea.

* See Sch. V. Form XXXI, *infra*.

† See ss. 252 and 208, *supra*.

(2) If the accused pleads guilty, the Magistrate shall record the plea, and may, in his discretion, convict him thereon.

256. (1) If the accused refuses to plead, or does not plead, or claims to be tried, he shall be required to state whether he wishes to cross-examine any, and, if so, which, of the witnesses for the prosecution whose evidence has been taken. If he says he does so wish, the witnesses named by him shall be recalled, and, after cross-examination and re-examination (if any), they shall be discharged. The evidence of any remaining witnesses for the prosecution shall next be taken, and, after cross-examination and re-examination (if any), they also shall be discharged. The accused shall then be called upon to enter upon his defence, and produce his evidence.

(2) If the accused puts in any written statement, the Magistrate shall file it with the record.

257. (1) If the accused, after he has entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay, or for defeating the ends of justice. Such ground shall be recorded by him in writing :

Provided that, when the accused has cross-examined, or had the opportunity of cross-examining, any witness after the charge is framed, the attendance of such witness shall not be compelled under this section unless the Magistrate is satisfied that it is necessary for the purposes of justice.

(2) The Magistrate may, before summoning any witness on such application, require that his reasonable expenses incurred in attending for the purposes of the trial be deposited in Court.

258. (1) If in any case under this chapter, in which a charge has been framed, the Magistrate finds the accused not guilty, he shall record an order of acquittal.

(2) If in any such case the Magistrate finds the accused guilty, he shall pass sentence upon him according to law.*

* See Sch. V., Form XXIX., *infra*.

259. When the proceedings have been instituted upon complaint, and, upon any day fixed for the hearing of the case, the complainant is absent, and the offence may be lawfully compounded,* the Magistrate may, in his discretion, notwithstanding anything hereinbefore contained, at any time before the charge has been framed, discharge the accused.

CHAPTER XXII.

OF SUMMARY TRIALS.

260.† (1) Notwithstanding anything contained in this Code—

Power to try summarily.

- (a) the District Magistrate.
- (b) any Magistrate of the first class specially empowered in this behalf by the Local Government, and
- (c) any Bench of Magistrates invested with the powers of a Magistrate of the first class and specially empowered in this behalf by the Local Government,

may, if he or they think fit, try in a summary way all or any of the following offences—

- (a) offences not punishable with death, transportation, or imprisonment for a term exceeding six months ;
- (b) offences relating to weights and measures under sections 264, 265, and 266 of the Indian Penal Code ;‡
- (c) hurt under section 323 of the same Code ;‡
- (d) theft under section 379, 380, or 381 of the same Code,‡ where the value of the property stolen does not exceed fifty rupees ;
- (e) dishonest misappropriation of property under section 403 of the same Code‡ where the value of the property misappropriated does not exceed fifty rupees ;

* See s. 345, *infra*.

† As to powers of Magistrates in Upper Burma, see the Upper Burma Criminal Justice Regulation (V. of 1892), Sch., s. V. As to European British subjects, however, see *ibid*, s. XVII. As to summary trial of forest offences, see the Indian Forest Act (VII. of 1878), s. 65.

‡ Act XLV. of 1860.

- (f) receiving or retaining stolen property under section 411 of the same Code* where the value of such property does not exceed fifty rupees;
- (g) assisting in the concealment or disposal of stolen property under section 414 of the same Code* where the value of such property does not exceed fifty rupees;
- (h) mischief under section 427 of the same Code*;
- (i) house-trespass under section 448 and offences under sections 451, 456, and 457 of the same Code;
- (j) insult with intent to provoke a breach of the peace under section 504, and criminal intimidation under section 506 of the same Code*;
- (k) abetment of any of the foregoing offences;
- (l) an attempt to commit any of the foregoing offences when such attempt is an offence;
- (m) offences under section 20 of the Cattle Trespass Act, 1871 :†

Provided that no case in which a Magistrate exercises the special powers conferred by section 34 shall be tried in a summary way.

(2) When, in the course of a summary trial, it appears to the Magistrate or Bench that the case is one which is of a character which renders it undesirable that it should be tried summarily, the Magistrate or Bench shall recall any witnesses who may have been examined, and proceed to rehear the case in manner provided by this Code.

261. The Local Government may confer on any Bench of Magistrates invested with the powers of a Magistrate of the second or third class, power to try summarily all or any of the following offences—

- (a) offences against the Indian Penal Code,* sections 277, 278, 279, 285, 286, 289, 290, 292, 293, 294, 323, 334, 336, 341, 352, 426, and 447;
- (b) offences against Municipal Acts and the conservancy clauses of Police Acts which are punishable only with fine, or with imprisonment for a term not exceeding one month;

* Act XLV. of 1860.

† Act I. of 1871.

- (c) abetment of any of the foregoing offences ;
- (d) an attempt to commit any of the foregoing offences when such attempt is an offence.

262. (1) In trials under this chapter, the procedure prescribed for summons-cases shall be followed in summons-cases, and the procedure prescribed for warrant-cases shall be followed in warrant-cases, except as hereinafter mentioned.

- (2)** No sentence of imprisonment for a term exceeding three months shall be passed in the case of any conviction under this chapter.
- Limit of imprisonment.

263. In cases where no appeal lies, the Magistrate or Bench of Magistrates need not record the evidence of the witnesses, or frame a formal charge ; but he or they shall enter in such form, as the Local Government may direct the following particulars—,

- (a) the serial number ;
- (b) the date of the commission of the offence ;
- (c) the date of the report or complaint ;
- (d) the name of the complainant (if any) ;
- (e) the name, parentage, and residence of the accused ;
- (f) the offence complained of and the offence (if any) proved, and, in cases coming under clause (d), clause (e), clause (f), or clause (g) of sub-section (1) of section 260, the value of the property in respect of which the offence has been committed ;
- (g) the plea of the accused and his examination (if any) ;
- (h) the finding, and, in the case of a conviction, a brief statement of the reasons therefor ;
- (i) the sentence or other final order ; and
- (j) the date on which the proceedings terminated.

264. (1) In every case tried summarily by a Magistrate or Bench in which an appeal lies, such Magistrate or Bench shall, before passing sentence, record a judgment embodying the substance of the evidence and also the particulars mentioned in section 263.

Record in appealable cases.

- (2)** Such judgment shall be the only record in cases coming within this section.

265. (1) Records made under section 263 and judgments Language of record and recorded under section 264 shall be judgment. written by the presiding officer, either in English or in the language of the Court, or, if the Court to which such presiding officer is immediately subordinate so directs, in such officer's mother-tongue.

(2) The Local Government may authorize any Bench of Bench may be authorized Magistrates empowered to try offences to employ clerk. summarily to prepare the aforesaid record or judgment by means of an officer appointed in this behalf by the Court to which such Bench is immediately subordinate, and the record or judgment so prepared shall be signed by each member of such Bench present taking part in the proceedings.

(3) If no such authorisation be given, the record prepared by a member of the Bench and signed as aforesaid shall be the proper record.

(4) If the Bench differ in opinion, any dissentient member may write a separate judgment.

CHAPTER XXIII.

OF TRIALS BEFORE HIGH COURTS AND COURTS OF SESSION.*

A.—*Preliminary.*

266. In this chapter, except in sections 276 and 307, and in Chapter XVIII., the expression "High Court" defined. "High Court" means a High Court of Judicature established or to be established under The Indian High Courts Act, 1861,† and includes the Chief Court of the Punjab, the [Chief Court of Lower Burma],‡ and such other Courts§ as the Governor-General in Council may, by notification in the *Gazette of India*, declare to be High Courts for the purposes of this Chapter.

* As to Courts of Session in Upper Burma, see the Upper Burma Criminal Justice Regulation (V. of 1892), Sch., s. II. As to European British subjects, see s. XXII., *ibid.*

† Stat. 24 & 25 Vict., c. 104.

‡ The words in square brackets in s. 266 have been substituted by s. 47 of the Lower Burma Courts Act (VI. of 1900), Sch. I., for the words "Court of the Recorder of Rangoon."

§ In the Sonthal Parganas, the Commissioner is the High Court in certain cases.—See the Sonthal Parganas Justice Regulation (V. of 1893), s. 4, as modified up to 1st October 1899.

Trials before High Court to be by jury.

267. All trials under this chapter before a High Court shall be by jury ;

and, notwithstanding anything herein contained, in all criminal cases transferred to a High Court under this Code, or under the Letters Patent of any High Court established under the Indian High Courts Act, 1861,* the trial may, if the High Court so directs, be by jury.

Trials before Court of Session to be by jury or with assessors.

268. All trials before a Court of Session shall be either by jury, or with the aid of assessors.

269. (1) The Local Government may, with the previous sanction of the Governor-General in Council, order trials before Court of Session to be by jury. **Local Government may order trials before Court of Session to be by jury.** that the trial of all offences, or of any particular class of offences, before any Court of Session, shall be by jury in any district, and may, with the like sanction, revoke or alter such order.

(2) The Local Government, by like order, may also declare that, in the case of any district in which the trial of any offence is to be by jury, the trial of such offences shall, if the Judge, on application made to him or of his own motion, so directs, be by jurors summoned from a special jury list, and may revoke or alter such order.

(3) When the accused is charged at the same trial with several offences of which some are and some are not triable by jury, he shall be tried by jury for such of those offences as are triable by jury, and by the Court of Session, with the aid of the jurors as assessors, for such of them as are not triable by jury.

Trial before Court of Session to be conducted by Public Prosecutor.

270. In every trial before a Court of Session, the prosecution shall be conducted by a Public Prosecutor.

B.—Commencement of Proceedings.

271. (1) When the Court is ready to commence the trial, the accused shall appear or be brought before it, and the charge shall be read out in Court and explained to him, and he shall be asked whether he is guilty of the offence charged, or claims to be tried.

Commencement of trial.

* Stat. 24 & 25 Vict., c. 104.

Plea of guilty.

(2) If the accused pleads guilty, the plea shall be recorded, and he may be convicted thereon.

272. If the accused refuses to, or does not, plead, or if he Refusal to plead or claim to be tried. claims to be tried, the Court shall proceed to choose jurors or assessors as hereinafter directed, and to try the case :

Provided that, subject to the right of objection hereinafter mentioned, the same jury may try, or the same assessors may aid in the trial of, as many accused persons successively as the Court thinks fit.

Trial by same jury or assessors of several offenders in succession.

273. (1) In trials before the High Court, when it appears to Entry on unsustainable charges. the High Court, at any time before the commencement of the trial of the person charged, that any charge or any portion thereof is clearly unsustainable, the Judge may make on the charge an entry to that effect.

(2) Such entry shall have the effect of staying proceedings upon the charge or portion of the charge, as the case may be.

Effect of entry.

C.—Choosing a Jury.

Number of jury.

274. (1) In trials before the High Court, the jury shall consist of nine persons.

(2) In trials by jury before the Court of Session, the jury shall consist of such uneven number, not being less than three, or more than nine, as the Local Government, by order applicable to any particular district, or to any particular class of offences in that district, may direct.

275. In a trial by jury before the Court of Session of a person not being an European or an American, a majority of the jury shall, if he so desires, consist of persons who are neither Europeans nor Americans.

Jury for trial of persons not Europeans or Americans before Court of Session.

276. The jurors shall be chosen by lot from the persons summoned to act as such in such manner as the High Court may from time to time by rule direct :

Jurors to be chosen by lot.

Provided that—

first, pending the issue under this section of rules for any Court, the practice now prevailing in such Court in respect to the choosing of jurors shall be followed ;

secondly, in case of a deficiency of persons summoned, the number of jurors required may, with the leave of the Court, be chosen from such other persons as may be present ;

trials before special jurors. *thirdly*, in the presidency-towns—

(a) if the accused person is charged with having committed an offence punishable with death, or,

(b) if in any other case, a Judge of the High Court so directs,

the jurors shall be chosen from the special jury list hereinafter prescribed ; and,

fourthly, in any district for which the Local Government has declared that the trial of certain offences may be by special jury, the jurors shall, in any case in which the Judge so directs, be chosen from the special jury list prescribed in section 325.

277. (1) As each juror is chosen, his name shall be called aloud, and, upon his appearance, the accused shall be asked if he objects to be tried by such juror.

(2) Objection may then be taken to such juror by the accused or by the prosecutor, and the grounds of objection shall be stated :

Provided that, in the High Court, objections without grounds stated shall be allowed to the number of eight on behalf of the Crown and eight on behalf of the person or all the persons charged.

278. Any objection taken to a juror on any of the following grounds, if made out to the satisfaction of the Court, shall be allowed—

(a) some presumed or actual partiality in the juror ;

- (b) some personal ground, such as alienage, deficiency in the qualification required by any law or rule having the force of law for the time being in force, or being under the age of twenty-one or above the age of sixty years;
- (c) his having, by habit or religious vows, relinquished all care of worldly affairs;
- (d) his holding any office in or under the Court;
- (e) his executing any duties of police, or being entrusted with police-duties;
- (f) his having been convicted of any offence which, in the opinion of the Court, renders him unfit to serve on the jury;
- (g) his inability to understand the language in which the evidence is given or, when such evidence is interpreted, the language in which it is interpreted;
- (h) any other circumstance which, in the opinion of the Court, renders him improper as a juror.

279. (1) Every objection taken to a juror shall be decided by the Court, and such decision shall be recorded, and be final.

Decision of objection.

(2) If the objection is allowed, the place of such juror shall be supplied by any other juror attending in obedience to a summons, and chosen in manner provided by section 276, or, if there is no such other juror present, then by any other person present in the Court whose name is on the list of jurors, or whom the Court considers a proper person to serve on the jury:

Supply of place of juror against whom objection allowed.

Provided that no objection to such juror or other person is taken under section 278, and allowed.

280. (1) When the jurors have been chosen, they shall appoint one of their number to be foreman.

Foreman of jury.

(2) The foreman shall preside in the debates of the jury, deliver the verdict of the jury, and ask any information from the Court that is required by the jury or any of the jurors.

(3) If a majority of the jury do not, within such time as the Judge thinks reasonable, agree in the appointment of a foreman, he shall be appointed by the Court.

281. When the foreman has been appointed, the jurors shall be sworn under the Indian Oaths Act, 1873.*

Swearing of jurors.

282. (1) If, in the course of a trial by jury, at any time before the return of the verdict, any juror, from any sufficient cause, is prevented from attending throughout the trial, or if any juror absents himself, and it is not practicable to enforce his attendance, or if it appears that any juror is unable to understand the language in which the evidence is given or, when such evidence is interpreted, the language in which it is interpreted, a new juror shall be added, or the jury shall be discharged, and a new jury chosen.

Procedure when juror ceases to attend, &c.

(2) In each of such cases the trial shall commence anew.

283. The Judge may also discharge the jury whenever the prisoner becomes incapable of remaining at the bar.

Discharge of jury in case of sickness of prisoner.

D.—Choosing Assessors.

284. When the trial is to be held with the aid of assessors, two or more shall be chosen, as the Judge thinks fit, from the persons summoned to act as such.

Assessors how chosen.

285. (1) If, in the course of a trial with the aid of assessors, at any time before the finding, any assessor is, from any sufficient cause, prevented from attending throughout the trial, or absents himself, and it is not practicable to enforce his attendance, the trial shall proceed with the aid of the other assessor or assessors.

Procedure when assessor is unable to attend.

(2) If all the assessors are prevented from attending, or absent themselves, the proceedings shall be stayed, and a new trial shall be held with the aid of fresh assessors.

E.—Trial to Close of Cases for Prosecution and Defence.

286. (1) When the jurors or assessors have been chosen, the prosecutor shall open his case by reading from the Indian Penal Code † or other law the description of the offence charged, and stating shortly by what evidence he expects to prove the guilt of the accused.

Opening case for prosecution.

* Act X. of 1873.

† Act XLV. of 1860.

Examination of witnesses.

(2) The prosecutor shall then examine his witnesses.

287. The examination of the accused duly recorded by or before the committing Magistrate shall be tendered by the prosecutor and read as evidence.*

Examination of accused before Magistrate to be evidence.

288. The evidence of a witness duly taken in the presence of the accused before the committing Magistrate may, in the discretion of the presiding Judge, if such witness is produced and examined, be treated as evidence in the case.

Evidence given at preliminary inquiry admissible.

289. (1) When the examination of the witnesses for the prosecution and the examination (if any) of the accused are concluded, the accused shall be asked whether he means to adduce evidence.

Procedure after examination of witnesses for prosecution.

(2) If he says that he does not, the prosecutor may sum up his case; and, if the Court considers that there is no evidence that the accused committed the offence, it may then, in a case tried with the aid of assessors, record a finding, or, in a case tried by a jury, direct the jury to return a verdict of not guilty.

(3) If the accused, or any one of several accused, says that he means to adduce evidence, and the Court considers that there is no evidence, that the accused committed the offence, the Court may then, in a case tried with the aid of assessors, record a finding, or, in a case tried by a jury, direct the jury to return a verdict of not guilty.

(4) If the accused, or any one of several accused, says that he means to adduce evidence, and the Court considers that there is evidence that he committed the offence, or if, on his saying that he does not mean to adduce evidence, the prosecutor sums up his case, and the Court considers that there is evidence that the accused committed the offence, the Court shall call on the accused to enter on his defence.

290. The accused or his pleader may then open his case, stating the facts or law on which he intends to rely, and making such comments as he thinks necessary on the evidence for the prosecution.

Defence.

* See the Indian Evidence Act (I. of 1872), s. 80.

He may then examine his witnesses (if any), and after their cross-examination and re-examination (if any), may sum up his case.

291. The accused shall be allowed to examine any witness not previously named by him if such witness is in attendance; but he shall not, except as provided in section 211 and 231, be entitled of right to have any witness summoned other than the witnesses named in the list delivered to the Magistrate by whom he was committed for trial.

Right of accused as to examination and summoning of witnesses.

292. If the accused or any of the accused adduces any evidence, the prosecutor shall be entitled to reply.

Prosecutor's right of reply.

293. (1) Whenever the Court thinks that the jury or assessors should view the place in which the offence charged is alleged to have been committed, or any other place in which any other transaction material to the trial is alleged to have occurred, the Court shall make an order to that effect, and the jury or assessors shall be conducted in a body, under the care of an officer of the Court, to such place, which shall be shown to them by a person appointed by the Court.

View by jury or assessors.

(2) Such officer shall not, except with the permission of the Court, suffer any other person to speak to, or hold any communication with, any of the jury or assessors, and, unless the Court otherwise directs, they shall when the view is finished, be immediately conducted back into Court.

294. If a juror or assessor is personally acquainted with any relevant fact, it is his duty to inform the Judge that such is the case, whereupon he may be sworn, examined, cross-examined, and re-examined in the same manner as any other witness.

When juror or assessor may be examined.

295. If a trial is adjourned, the jury or assessors shall attend at the adjourned sitting, and at every subsequent sitting, until the conclusion of the trial.

Jury or assessors to attend at adjourned sitting.

296. The High Court may, from time to time, make rules as to keeping the jury together during a trial before such Court lasting for more than one day; and, subject to such rules, the presiding Judge may

Locking up jury.

order whether and in what manner the jurors shall be kept together under the charge of an officer of the Court, or whether they shall be allowed to return to their respective homes.

F.—Conclusion of Trial in Cases tried by Jury.

297. In cases tried by jury, when the case for the defence and the prosecutor's reply (if any) are concluded, the Court shall proceed to charge the jury, summing up the evidence for the prosecution and defence, and laying down the law by which the jury are to be guided.

Charge to jury.

298. (1) In such cases it is the duty of the Judge—

- (a) to decide all questions of law arising in the course of the trial, and especially all questions as to the relevancy of facts which it is proposed to prove, and the admissibility of evidence or the propriety of questions asked by or on behalf of the parties; and, in his discretion, to prevent the production of inadmissible evidence, whether it is or is not objected to by the parties;
- (b) to decide upon the meaning and construction of all documents given in evidence at the trial;
- (c) to decide upon all matters of fact which it may be necessary to prove in order to enable evidence of particular matters to be given;
- (d) to decide whether any question which arises is for himself or for the jury, and upon this point his decision shall bind the jurors.

(2) The Judge may, if he thinks proper, in the course of his summing-up, express to the jury his opinion upon any question of fact, or upon any question of mixed law and fact, relevant to the proceeding.

Illustrations.

(a.) It is proposed to prove a statement made by a person not being a witness in the case on the ground that circumstances are proved which render evidence of such statement admissible:

It is for the Judge, and not for the jury, to decide whether the existence of those circumstances has been proved.

(b.) It is proposed to give secondary evidence of a document the original of which is alleged to have been lost or destroyed:

It is the duty of the Judge to decide whether the original has been lost or destroyed.

Duty of jury.

299. It is the duty of the jury—

- (a) to decide which view of the facts is true, and then to return the verdict which, under such view, ought, according to the direction of the Judge, to be returned ;
- (b) to determine the meaning of all technical terms (other than terms of law) and words used in an unusual sense which it may be necessary to determine whether such words occur in documents or not ;
- (c) to decide all questions which, according to law, are to be deemed questions of fact ;
- (d) to decide whether general indefinite expressions do or do not apply to particular cases, unless such expressions refer to legal procedure, or unless their meaning is ascertained by law, in either of which cases it is the duty of the Judge to decide their meaning.

Illustrations.

(a.) *A* is tried for the murder of *B* :

It is the duty of the Judge to explain to the jury the distinction between murder and culpable homicide, and to tell them under what views of the facts *A* ought to be convicted of murder or of culpable homicide, or to be acquitted :

It is the duty of the jury to decide which view of the facts is true, and to return a verdict in accordance with the direction of the Judge, whether that direction is right or wrong, and whether they do or do not agree with it.

(b) The question is whether a person entertained a reasonable belief on a particular point—whether work was done with reasonable skill or due diligence :

Each of these is a question for the jury.

300 In cases tried by jury, after the Judge has finished his charge, the jury may retire to consider their verdict.

Retirement to consider.

Except with the leave of the Court, no person other than a juror shall speak to, or hold any communication with, any member of such jury.

301. When the jury have considered their verdict, the foreman shall inform the Judge what is their verdict, or what is the verdict of a majority.

Delivery of verdict.

302. If the jury are not unanimous, the Judge may require them to retire for further consideration. After such a period as the Judge considers reasonable, the jury may deliver their verdict, although they are not unanimous.

Procedure where jury differ.

303. (1) Unless otherwise ordered by the Court, the jury shall return a verdict on all the charges on which the accused is tried, and the Judge may question jury. Judge may ask them such questions as are necessary to ascertain what their verdict is.

Verdict to be given on each charge.

(2) Such questions and the answers to them shall be recorded.

Questions and answers to be recorded.

304. When, by accident or mistake, a wrong verdict is delivered, the jury may, before or immediately after it is recorded, amend the verdict, and it shall stand as ultimately amended.

Amending verdict.

305. (1) When, in a case tried before a High Court, the jury are unanimous in their opinion, or, when, as many as six are of one opinion, and the Judge agrees with them, the Judge shall give judgment in accordance with such opinion.

Verdict in High Court when to prevail.

(2) When, in any such case the jury are satisfied that they will not be unanimous, but six of them are of one opinion, the foreman shall so inform the Judge.

(3) If the Judge disagrees with the majority, he shall at once discharge the jury.

Discharge of jury in other cases.

(4) If there are not so many as six who agree in opinion, the Judge shall, after the lapse of such time as he thinks reasonable, discharge the jury.

306 (1) When, in a case tried before the Court of Session, the Judge does not think it necessary to express disagreement with the verdict of the jurors, or of a majority of the jurors, he shall give judgment accordingly.

Verdict in Court of Session when to prevail.

(2) If the accused is acquitted, the Judge shall record judgment of acquittal. If the accused is convicted, the Judge shall pass sentence on him according to law.

307. (1) If, in any such case, the Judge disagrees with the verdict of the jurors, or of a majority of the jurors, on all or any of the charges on which the accused has been tried, and is clearly of opinion that it is necessary for the ends of justice to submit the case to the High Court, he shall submit the case accordingly, recording the grounds of his opinion, and, when the verdict is one of acquittal, stating the offence which he considers to have been committed.

(2) Whenever the Judge submits a case under this section, he shall not record judgment of acquittal or of conviction on any of the charges on which the accused has been tried, but he may either remand the accused to custody, or admit him to bail.

(3) In dealing with the case so submitted, the High Court may exercise any of the powers which it may exercise on an appeal, and, subject thereto, it shall, after considering the entire evidence, and after giving due weight to the opinions of the Sessions Judge and the jury, acquit or convict the accused of any offence of which the jury could have convicted him upon the charge framed and placed before it; and, if it convicts him, may pass such sentence as might have been passed by the Court of Session.

G.—Re-trial of Accused after Discharge of Jury.

308. Whenever the jury is discharged, the accused shall be detained in custody or on bail (as the case may be), and shall be tried by another jury unless the Judge considers that he should not be re-tried in which case the Judge shall make an entry to that effect on the charge, and such entry shall operate as an acquittal.

H.—Conclusion of Trial in Cases tried with Assessors.

309. (1) When, in a case tried with the aid of assessors, the case for the defence, and the prosecutor's reply (if any) are concluded, the Court may sum up the evidence for the prosecution and defence, and shall then require each of the assessors to state his opinion orally, and shall record such opinion.

(2) The Judge shall then give judgment, but, in doing so, shall not be bound to conform to the opinions of the assessors.

Judgment.

(3) If the accused is convicted, the Judge shall pass sentence on him according to law.

I.—Procedure in Case of Previous Conviction.

310. In the case of a trial by jury or with the aid of assessors, where the accused is charged with an offence committed after a previous conviction for any offence, the procedure laid down in sections 271, 286, 305, 306, and 309, shall be modified as follows:—

(a) The part of the charge stating the previous conviction shall not be read out in Court, nor shall the accused be asked whether he has been previously convicted as alleged in the charge unless and until he has either pleaded guilty to, or been convicted of, the subsequent offence:

(b) If he pleads guilty to, or is convicted of, the subsequent offence he shall then be asked whether he has been previously convicted as alleged in the charge:

(c) If he answers that he has been so previously convicted, the Judge may proceed to pass sentence on him accordingly; but, if he denies that he has been so previously convicted, or refuses to, or does not answer such question, the jury or the Court and the assessors (as the case may be) shall then hear evidence concerning such previous conviction, and, in such case (where the trial is by jury), it shall not be necessary to swear the jurors again.

311. Notwithstanding anything in the last foregoing section, evidence of the previous conviction may be given at the trial for the subsequent offence if the fact of the previous conviction is relevant under the provisions of the Indian Evidence Act, 1872.*

When evidence of previous conviction may be given.

3.—List of Jurors for High Court, and summoning Jurors for that Court.

312. The names of not more than four hundred persons shall at any one time be entered in the special jurors' list.

Number of special jurors.

313. (1) The Clerk of the Crown shall, before the first day of April in each year, and, subject to such rules as the High Court, from time to time, prescribes, prepare—

Lists of common and special jurors.

(a) a list of all persons liable to serve as common jurors ;
and

(b) a list of persons liable to serve as special jurors only.

(2) Regard shall be had, in the preparation of the latter list to the property, character, and education of the persons whose names are entered therein.

(3) No person shall be entitled to have his name entered in the special jurors' list merely because he may have been entered in the special jurors' list for a previous year.

(4) The Governor-General in Council in the case of the High Court at Fort William in Bengal, and, in the case of other High Courts, the Local Government, may exempt any salaried officer of Government from serving as a juror.

(5) The Clerk of the Crown shall, subject to such rules as Discretion of officer preparing lists. aforesaid, have full discretion to prepare the said lists as seems to him to be proper, and there shall be no appeal from, or review of, his decision.

314. (1) Preliminary lists of persons liable to serve as common jurors and as special jurors, respectively, signed by the Clerk of the Crown, shall be published once in the local official Gazette before the fifteenth day of April next after their preparation.

Publication of lists, preliminary and revised.

(2) Revised lists of persons liable to serve as common jurors and special jurors, respectively, signed as aforesaid, shall be published once in the local official Gazette before the first day of May next after their preparation.

(3) Copies of the said lists shall be affixed to some conspicuous part of the Court-house.

315. (1) Out of the persons named in the revised lists aforesaid, there shall be summoned for each session in each presidency-town at least twenty-seven of those who are liable to serve on special juries and fifty-four of those who are liable to serve on common juries.

(2) No person shall be so summoned more than once in six months unless the number cannot be made up without him.

(3) If, during the continuance of any sessions, it appears that the number of persons so summoned is not sufficient, such number as may be necessary of other persons liable to serve as aforesaid shall be summoned for such sessions.

316. Whenever a High Court has given notice of its intention to hold sittings at any place outside the presidency-towns for the exercise of its original criminal jurisdiction, the Court of Session at such place shall, subject to any direction which may be given by the High Court, summon a sufficient number of jurors from its own list, in the manner hereinafter prescribed for summoning jurors to the Court of Session.

317. (1) In addition to the persons so summoned as jurors, the said Court of Session shall, if it thinks needful, after communication with the commanding officer, cause to be summoned such number of commissioned and non-commissioned officers in Her Majesty's Army resident within ten miles of its place of sitting as the Court considers to be necessary to make up the juries required for the trial of persons charged with offences before the High Court as aforesaid.

(2) All officers so summoned shall be liable to serve on such juries notwithstanding anything contained in this Code; but no such officer shall be summoned whom his commanding officer desires to have excused on the ground of urgent military duty, or for any other special military reason.

318. Any person summoned under section 315, section 316, or section 317, who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the Judge, or fails to attend after an adjourn-

ment of the Court after being ordered to attend, shall be deemed guilty of a contempt, and be liable, by order of the Judge, to such fine as he thinks fit; and, in default of payment of such fine, to imprisonment for a term not exceeding six months in the civil jail until the fine is paid:

Provided that the Court may in its discretion remit any fine or imprisonment so imposed.

K.—List of Jurors and Assessors for Court of Session, and summoning Jurors and Assessors for that Court.

319. All male persons between the ages of twenty-one and sixty shall, except as next hereinafter mentioned, be liable to serve as jurors or assessors at any trial held within the district in which they reside, or, if the Local Government, on consideration of local circumstances, has fixed any smaller area in this behalf, within the area so fixed.

320. The following persons are exempt from liability to serve as jurors or assessors, namely—

Exemptions.

- (a) officers in civil employ superior in rank to a District Magistrate;
- (b) salaried Judges;
- (c) Commissioners and Collectors of Revenue or Customs;
- (d) police-officers and persons engaged in the Preventive Service in the Customs Department;
- (e) persons engaged in the collection of the revenue whom the Collector thinks fit to exempt on the ground of official duty;
- (f) persons actually officiating as priests or ministers of their respective religions;
- (g) persons in Her Majesty's Army, except when, by any law in force for the time being, they are specially made liable to serve as jurors or assessors;
- (h) surgeons and others who openly and constantly practise the medical profession;

- (i) legal practitioners (as defined by the Legal Practitioners Act, 1879*) in actual practice;
- (j) persons employed in the Post-office and Telegraph Departments;
- (k) persons exempted from personal appearance in Court under the provisions of the Code of Civil Procedure, sections 640 and 641†;
- (l) other persons exempted by the Local Government from liability to serve as jurors or assessors.

321. (1) The Sessions Judge and the Collector of the district, or such other officer as the Local Government appoints in this behalf, shall prepare and make out, in alphabetical order, a list of persons liable to serve as jurors or assessors, and qualified, in the judgment of the Sessions Judge and Collector or other officer as aforesaid, to serve as such, and not likely to be successfully objected to under section 278, clauses (b) to (h), both inclusive.

(2) The list shall contain the name, place of abode, and quality or business of every such person; and, if the person is an European or an American, the list shall mention the race to which he belongs.

322. Copies of such list shall be stuck up in the office of the Collector or other officer as aforesaid, and in the Court-houses of the District Magistrate and of the District Court, and extracts therefrom in some conspicuous place in the town or towns in or near which the persons named in the extract reside.

323. To every such copy or extract shall be subjoined a notice stating that objections to the list will be heard and determined by the Sessions Judge and Collector or other officer as aforesaid, at the Sessions Court-house, and at a time to be mentioned in the notice.

324. (1) For the hearing of such objections, the Sessions Judge shall sit with the Collector or other officer as aforesaid, and shall, at the time and place mentioned in the notice, revise the list and hear the objections (if any) of persons interested in the amendment thereof, and shall strike out the name of any person not suitable in their judgment to

* Act XVIII. of 1879.

† This reference to ss 640 and 641 of Act XIV. of 1882 (the old Code) should now be meant to apply respectively to ss 132 and 133 of Act V. of 1908 (the Code now in force).—See s. 158 of the latter Act.

serve as a juror or as an assessor, or who may establish his right to any exemption from service given by section 320, and insert the name of any person omitted from the list whom they deemed qualified for such service.

(2) In the event of a difference of opinion between the Sessions Judge and the Collector or other officer as aforesaid, the name of the proposed juror or assessor shall be omitted from the list.

(3) A copy of the revised list shall be signed by the Sessions Judge and Collector or other officer as aforesaid, and sent to the Court of Session.

(4) Any order of the Sessions Judge and Collector or other officer as aforesaid in preparing and revising the list shall be final.

(5) Any exemption not claimed under this section shall be deemed to be waived until the list is next revised.

Annual revision of list. (6) The list so prepared and revised shall be again revised once in every year.

(7) The list so revised shall be deemed a new list, and shall be subject to all the rules hereinbefore contained as to the list originally prepared.

325. In the case of any district for which the Local Government has declared that the trial of certain offences shall, if the Judge so direct, be by special jury, the Sessions Judge and the Collector of such district or other officer as aforesaid shall prepare, in addition to the revised list hereinbefore prescribed, a special list containing the names of such jurors as are borne on the revised list, and are, in the opinion of such Sessions Judge and Collector or other officer as aforesaid, by reason of their possessing superior qualifications in respect of property, character, or education, fit persons to serve as special jurors: Provided always that the inclusion of the name of any person in such special list shall not involve the removal of his name from the revised list, nor relieve him of his liability to serve as an ordinary juror in cases not tried by special jury.

326. (1) The Sessions Judge shall ordinarily, seven days at least before the day which he may from time to time fix for holding the sessions, send a letter* to the District Magistrate requesting him to summon District Magistrate to summon jurors and assessors.

* See Sch. V., Form XXXII., *infra*.

as many persons named in the said revised list or the said special list as seem to the Sessions Judge to be needed for trials by jury and trials with the aid of assessors at the said Sessions, the number to be summoned not being less than double the number required for any such trial.

(2) The names of the persons to be summoned shall be drawn by lot in open Court, excluding those who have served within six months, unless the number cannot be made up without them; and the name so drawn shall be specified in the said letter.

327. The Court of Session may direct jurors or assessors to be summoned at other periods than the period specified in section 326, when the number of trials before the Court renders the attendance of one set of jurors or assessors for a whole session oppressive, or whenever, for other reasons, such direction is found to be necessary.

328. Every summons* to a juror or assessor shall be in writing, and shall require his attendance as a juror or assessor, as the case may be, at a time and place to be therein specified.

329. When any person summoned to serve as a juror or assessor is in the service of Government or of a Railway Company, the Court to serve in which he is so summoned may excuse his attendance if it appears, on the representation of the head of the office in which he is employed, that he cannot serve as a juror or assessor, as the case may be, without inconvenience to the public.

330. (1) The Court of Session may, for reasonable cause, excuse any juror or assessor from attendance at any particular session.

(2) The Court of Session may, if it shall think fit, at the conclusion of any trial by special jury, direct that the jurors who have served on such jury shall not be summoned to serve again as jurors for a period of twelve months.

* See Sch. V., Form XXXIII., *infra*.

331. (1) At each session the said Court shall cause to be made a list of the names of those who
 List of jurors and assessors attending. have attended as jurors and assessors at such session.

(2) Such list shall be kept with the list of the jurors and assessors as revised under section 324.

(3) A reference shall be made in the margin of the said revised list to each of the names which are mentioned in the list prepared under this section.

332. (1) Any person summoned to attend as a juror or as an
 Penalty for non-attendance of juror or assessor. assessor who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the Court, or fails to attend after an adjournment of the Court, after being ordered to attend, shall be liable by order of the Court of Session to a fine not exceeding one hundred rupees.

(2) Such fine shall be levied by the District Magistrate by attachment and sale of any moveable property belonging to such juror or assessor within the local limits of the jurisdiction of the Court making the order.

(3) For good cause shown, the Court may remit or reduce any fine so imposed.

(4) In default of recovery of the fine by attachment and sale, such juror or assessor may, by order of the Court of Session, be imprisoned in the civil jail for the term of fifteen days unless such fine is paid before the end of the said term.

L.—Special Provisions for High Courts.

333. At any stage of any trial before a High Court under this
 Power of Advocate-General to stay prosecution. Code, before the return of the verdict, the Advocate-General may, if he thinks fit, inform the Court on behalf of Her Majesty that he will not further prosecute the defendant upon the charge; and thereupon all proceedings on such charge against the defendant shall be stayed, and he shall be discharged of and from the same. But such discharge shall not amount to an acquittal unless the presiding Judge otherwise directs.

334. For the exercise of its original criminal jurisdiction, every High Court shall hold sittings on such days and at such convenient intervals as the Chief Justice of such Court from time to time appoints.

335. (1) The High Court shall hold its sittings at the place at which it now holds them, or at such other place (if any) as the Governor-General in Council in the case of the High Court at Fort William, or the Local Government in the case of the other High Courts, may direct.

(2) But it may, from time to time, in the case of the High Court at Fort William, with the consent of the Governor-General in Council, and in all other cases with the consent of the Local Government, hold sittings at such other places within the local limits of its appellate jurisdiction as the High Court appoints.

(3) Such officer as the Chief Justice directs shall give notice beforehand in the local official Gazette of all sittings intended to be held for the exercise of the original criminal jurisdiction of the High Court.

336. The High Court may direct that all European British subjects and persons liable to be tried by it under section 214, who have been committed for trial by it within certain specified districts, or during certain specified periods of the year, shall be tried at the ordinary place of sitting of the Court, or direct that they shall be tried at a particular place named.

CHAPTER XXIV.

GENERAL PROVISIONS AS TO INQUIRIES AND TRIALS.

337.* (1) In the case of any offence† triable exclusively by the Court of Session or High Court, the District Magistrate, a Presidency Magistrate, any Magistrate of the first class inquiring into the offence, or,

* As to tender of pardon to an accomplice in Upper Burma and trial of the case by the Magistrate himself except in cases affecting European British subjects, see the Upper Burma Criminal Justice Regulation (V. of 1892), Sch., ss. VIII. and XVII.

† In places where the Punjab Frontier Crimes Regulation (IV. of 1887) is in force, the words, "triable exclusively by the Court of Session or High Court," are to be omitted.—See s 9 of that Regulation.

with the sanction of the District Magistrate, any other Magistrate, may, with the view of obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, the offence under inquiry, tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to such offence, and to every other person concerned, whether as principal or abettor, in the commission thereof.

(2) Every person accepting a tender under this section shall be examined as a witness in the case.

(3) Such person, if not on bail, shall be detained in custody until the termination of the trial * by the Court of Session or High Court, as the case may be.

(4) Every Magistrate, other than a Presidency Magistrate, who tenders a pardon under this section, shall record his reasons for so doing; and when any Magistrate has made such tender and examined the person to whom it has been made, he shall not try the case himself, although the offence which the accused appears to have committed may be triable by such Magistrate.

338. At any time after commitment, but before judgment is passed, the Court to which the commitment is made may, with the view of obtaining on the trial the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, any such offence, tender, or order the committing Magistrate or the District Magistrate to tender, a pardon on the same condition to such person.

339. (1) Where a pardon has been tendered under section 337 or section 338, and any person who has accepted such tender has, either by wilfully concealing anything essential, or by giving false evidence, not complied with the condition on which the tender was made, he may be tried for the offence in respect of which the pardon was so tendered, or for any other offence of which he appears to have been guilty in connection with the same matter.

(2) The statement made by a person who has accepted a tender of pardon may be given in evidence against him when the pardon has been forfeited under this section.

* In places where the Punjab Frontier Crimes Regulation (IV. of 1887) is in force, the words, " triable exclusively by the Court of Session or High Court," are to be omitted.—See s. 9 of that Regulation.

(3) No prosecution for the offence of giving false evidence in respect of such statement shall be entertained without the sanction of the High Court.

Right of accused to be defended.

340. Every person accused before any Criminal Court may of right be defended by a pleader.

341. If the accused, though not insane, cannot be made to understand the proceedings, the Court may proceed with the inquiry or trial and, in the case of a Court other than a High Court, if such inquiry results in a commitment, or if such trial results in a conviction, the proceedings shall be forwarded to the High Court with a report of the circumstances of the case, and the High Court shall pass thereon such order as it thinks fit.

342. (1) For the purpose of enabling the accused to explain any circumstances appearing in the evidence against him, the Court may, at any stage of any inquiry or trial, without previously warning the accused, put such questions to him as the Court considers necessary, and shall, for the purpose aforesaid, question him generally on the case after the witnesses for the prosecution have been examined, and before he is called on for his defence.

(2) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them; but the Court and the jury (if any) may draw such inference from such refusal or answers as it thinks just.*

(3) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

(4) No oath shall be administered to the accused.

343. Except as provided in sections 337 and 338, no influence, by means of any promise or threat induce disclosures, or otherwise, shall be used to an accused person to induce him to disclose or withhold any matter within his knowledge.

344.† (1) If, from the absence of a witness or any other reasonable cause, it becomes necessary or advisable to postpone the commencement of the proceedings, the Court may, if it thinks fit, postpone the proceedings.

* See the Indian Evidence Act (I. of 1872) s. 114, III. (h).

† Cf. the Indictable Offences Act, 1848 (Stat. 11 & 12 Vict., c. 42), s. 21.

ment of, or adjourn, any inquiry or trial, the Court may, if it thinks fit, by order in writing, stating the reasons therefor, from time to time postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody :

Provided that no Magistrate shall remand an accused person to
 Remand. custody under this section for a term exceeding fifteen days at a time.

(2) Every order made under this section by a Court other than a High Court shall be in writing signed by the presiding Judge or Magistrate.

Explanation.—If sufficient evidence has been obtained to raise
 Reasonable cause for re- a suspicion that the accused may have
 mand. committed an offence, and it appears
 likely that further evidence may be obtained by a remand, this is a
 reasonable cause for a remand.

345.* (1) The offences punishable under the sections of the
 Compounding offences. Indian Penal Code† described in the
 first two columns of the table next fol-
 lowing may be compounded by the persons mentioned in the third
 column of that table :

Offence.	Sections of In- dian Penal Code appli- cable.	Person by whom offence may be compounded.
Uttering words, &c., with deliberate intent to wound the religious feel- ings of any person.	298	The person whose religious feelings are intended to be wounded.
Causing hurt ...	323, 334	The person to whom the hurt is caused.

* For the section applicable instead of this section to hill-tribes to which the Kachin Hill-tribes Regulation (I. of 1895) and the Chin Hills Regulation (V. of 1896) have been applied, see Notifications Nos. 14 and 15, respectively, dated 30th June 1898, *Burma Gazette*, 1898, Pt. I., p. 322.

† Act XLV. of 1860.

Offence.	Sections of Indian Penal Code applicable.	Person by whom offence may be compounded.
Wrongfully restraining or confining any person.	341, 342	The person restrained or confined.
Assault or use of criminal force ...	352, 355, 358	The person assaulted or to whom criminal force is used.
Unlawful compulsory labour ...	374	The person compelled to labour.
Mischief, when the only loss or damage caused is loss or damage to a private person.	426, 427	The person to whom the loss or damage is caused.
Criminal trespass ...	447	The person in possession of the property trespassed upon.
House-trespass ...	448	
Criminal breach of contract of service.	490, 491, 492	The person with whom the offender has contracted.
Adultery ...	497	The husband of the woman.
Enticing or taking away or detaining with a criminal intent a married woman.	498	
Defamation ...	500	The person defamed.
Printing or engraving matter knowing it to be defamatory.	501	
Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter.	502	
Insult intended to provoke a breach of the peace.	504	The person insulted.
Criminal intimidation, except when the offence is punishable with imprisonment for seven years.	506	The person intimidated.

(2) The offences of causing hurt and grievous hurt, punishable under section 324, section 325, section 335, section 337, or section 338 of the Indian Penal Code,* may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the person to whom the hurt has been caused.

(3) When any offence is compoundable under this section, the abetment of such offence or an attempt to commit such offence (when such attempt is itself an offence) may be compounded in like manner.

(4) When the person who would otherwise be competent to compound an offence under this section is a minor, an idiot, or a lunatic, any person competent to contract on his behalf may compound such offence.

(5) When the accused has been committed for trial, or when he has been convicted, and an appeal is pending, no composition for the offence shall be allowed without the leave of the Court to which he is committed or, as the case may be, before which the appeal is to be heard.

(6) The composition of an offence under this section shall have the effect of an acquittal of the accused.

(7) No offence shall be compounded except as provided by this section.

346. (1) If, in the course of an inquiry or a trial before a Magistrate in any district outside the presidency-towns, the evidence appears to him to warrant a presumption that the case is one which should be tried or committed for trial by some other Magistrate in such district, he shall stay proceedings, and submit the case, with a brief report explaining its nature, to any Magistrate to whom he is subordinate, or to such other Magistrate having jurisdiction, as the District Magistrate directs.

(2) The Magistrate to whom the case is submitted may, if so empowered, either try the case himself, or refer it to any Magistrate subordinate to him having jurisdiction, or commit the accused for trial.

347. (1) If, in any inquiry before a Magistrate, or in any trial before a Magistrate before signing judgment, it appears to him at any stage of the proceedings that the case is one which ought to be tried by the

Procedure of Provincial Magistrate in cases which he cannot dispose of.

Procedure when, after commencement of inquiry or trial, Magistrate finds case should be committed.

Court of Session or High Court, and if he is empowered to commit for trial, he shall stop further proceedings, and commit the accused under the provisions hereinbefore contained.

(2) If such Magistrate is not empowered to commit for trial, he shall proceed under section 346.

348. Whoever, having been convicted of an offence punishable under Chapter XII. or Chapter XVII. of the Indian Penal Code * with imprisonment for a term of three years or upwards, is again, accused of any offence punishable under either of those chapters with imprisonment for a term of three years or upwards, shall be committed to the Court of Session or High Court, as the case may be, unless the Magistrate before whom the proceedings are pending is of opinion that he can himself pass an adequate sentence if the accused is convicted:

Trial of persons previously convicted of offences against coinage, stamp-law, or property.

Provided that, if the District Magistrate has been invested with powers under section 30, the case may be transferred to him instead of being committed to the Court of Session.

349.† (1) Whenever a Magistrate of the second or third class, having jurisdiction, is of opinion, after hearing the evidence for the prosecution and the accused, that the accused is guilty, and that he ought to receive a punishment different in kind from, or more severe than, that which such Magistrate is empowered to inflict, or that he ought to be required to execute a bond under section 106, he may record the opinion, and submit his proceedings, and forward the accused to the District Magistrate or Sub-divisional Magistrate to whom he is subordinate.

Procedure when Magistrate cannot pass sentence sufficiently severe.

(2) The Magistrate to whom the proceedings are submitted may, if he thinks fit, examine the parties, and recall and examine any witness who has already given evidence in the case, and may call for and take any further evidence, and shall pass such judgment, sentence, or order in the case as he thinks fit, and as is according to law:

* Act XLV. of 1860.

† In the Sonthal Parganas, any person, convicted under s. 349 by any Magistrate other than the Deputy Commissioner, may appeal to the Deputy Commissioner and if convicted by the Deputy Commissioner, may appeal to the Commissioner as High Court. See the Sonthal Parganas Justice Regulation (V. of 1893), s. 4, as modified up to October 1st, 1899.

Provided that he shall not inflict a punishment more severe than he is empowered to inflict under sections 32 and 33.

350. (1) Whenever any Magistrate, after having heard and recorded the whole or any part of the evidence in an inquiry or a trial, ceases to exercise jurisdiction therein, and is succeeded by another Magistrate who has and who exercises such jurisdiction, the Magistrate so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself; or he may resummon the witnesses, and recommence the inquiry or trial:

Conviction or commitment on evidence partly recorded by one Magistrate and partly by another.

Provided as follows—

(a) in any trial the accused may, when the second Magistrate commences his proceedings, demand that the witnesses or any of them be resummoned and reheard;

(b) the High Court or, in cases tried by Magistrates subordinate to the District Magistrate, the District Magistrate may, whether there be an appeal or not, set aside any conviction passed on evidence not wholly recorded by the Magistrate before whom the conviction was had, if such Court or District Magistrate is of opinion that the accused has been materially prejudiced thereby, and may order a new inquiry or trial.

(2) Nothing in this section applies to cases in which proceedings have been stayed under section 346.

351. (1) Any person attending a Criminal Court, although Detention of offenders attending Court. not under arrest or upon a summons, may be detained by such Court for the purpose of inquiry into or trial of any offence of which such Court can take cognizance, and which, from the evidence, may appear to have been committed, and may be proceeded against as though he had been arrested or summoned.

(2) When the detention takes place in the course of an inquiry under Chapter XVIII. or after a trial has been begun, the proceedings in respect of such person shall be commenced afresh, and the witnesses reheard.

352. The place in which any Criminal Court is held for the purpose of inquiring into or trying any Courts to be open. offence shall be deemed an open Court, to which the public generally may have access, so far as the same can conveniently contain them :

Provided that the presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case, that the public generally or any particular person shall not have access to, or be or remain in, the room or building used by the Court.

CHAPTER XXV.

OF THE MODE OF TAKING AND RECORDING EVIDENCE IN INQUIRIES AND TRIALS.

353. Except as otherwise expressly provided, all evidence Evidence to be taken in taken under Chapters XVIII., XX., presence of accused. XXI. XXII., and XXIII. shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in presence of his pleader.

354. In inquiries and trials (other than summary trials) Manner of recording evi- under this Code by or before a Magis-
dence, outside presidency- trate (other than a Presidency Magistrate)
towns. or Sessions Judge, the evidence of the
witnesses shall be recorded in the following manner :—

355.* (1) In summons-cases tried before a Magistrate other than a Presidency Magistrate, and in Record in summons-cases than a Presidency Magistrate, and in
and in trials of certain offenc- cases of the offences mentioned in sub-
es by first and second-class section (1) of section 260, clauses (b) to
Magistrates. (m), both inclusive, when tried by a
Magistrate of the first or second class, and in all proceedings under
section 514 (if not in the course of a trial), the Magistrate shall make a
memorandum of the substance of the evidence of each witness as
the examination of the witness proceeds.

(2) Such memorandum shall be written and signed by the Magistrate with his own hand, and shall form part of the record.

* Evidence recorded by Forest Officers under the Upper Burma Forest Regulation (V. of 1898), in accordance with s 355, 356, or 357 of the Code, are admissible in subsequent trials before Magistrates.—See s. 71 (2) of that Regulation.

(3) If the Magistrate is prevented from making a memorandum as above required, he shall record the reason of his inability to do so, and shall cause such memorandum to be made in writing from his dictation in open Court, and shall sign the same; and such memorandum shall form part of the record.

356.* (1) In all other trials before Courts of Session and Magistrates (other than Presidency side presidency-towns. Magistrates), and in all inquiries under Chapters XII. and XVIII., the evidence of each witness shall be taken down in writing in the language of the Court by the Magistrate or Sessions Judge, or in his presence and hearing, and under his personal direction and superintendence, and shall be signed by the Magistrate or Sessions Judge.

(2) When the evidence of such witness is given in English, the Magistrate or Sessions Judge may take it down in that language with his own hand, and, unless the accused is familiar with English, or the language of the Court is English, an authenticated translation of such evidence in the language of the Court shall form part of the record.

(3) In cases in which the evidence is not taken down in writing by the Magistrate or Sessions Judge, he shall, as the examination of each witness proceeds, make a memorandum of the substance of what such witness deposes: and such memorandum shall be written and signed by the Magistrate or Sessions Judge with his own hand, and shall form part of the record.

(4) If the Magistrate or Sessions Judge is prevented from making a memorandum as above required, he shall record the reason of his inability to make it.

357.* (1) The Local Government may direct that, in any district or part of a district, or in proceedings before any Court of Session, or before any Magistrate or class of Magistrates, the evidence of each witness shall, in the cases referred to in section 356, be taken down by the Sessions Judge or Magistrate with his own hand, and in his mother-tongue, unless he is prevented by any sufficient reason from taking down the evidence of any witness, in which

* See the note at the foot of the last-preceding page.

case he shall record the reason of his inability to do so, and shall cause the evidence to be taken down in writing from his dictation in open Court.

(2) The evidence so taken down shall be signed by the Sessions Judge or Magistrate, and shall form part of the record :

Provided that the Local Government may direct the Sessions Judge or Magistrate to take down the evidence in the English language, or in the language of the Court, although such language is not his mother-tongue.

358. In cases of the kind mentioned in section 355, the Magistrate may, if he thinks fit, take down the evidence of any witness in the manner provided in section 356, or, if, within the local limits of the jurisdiction of such Magistrate, the Local Government has made the order referred to in section 357, in the manner provided in the same section.

359. (1) Evidence taken under section 356 or section 357 shall not ordinarily be taken down in the form of question and answer, but in the form of a narrative.

Mode of recording evidence under section 356 or section 357.

(2) The Magistrate or Sessions Judge may, in his discretion, take down, or cause to be taken down, any particular question and answer.

360. (1) As the evidence of each witness taken under section 356 or section 357 is completed, it shall be read over to him in the presence of the accused, if in attendance, or of his pleader if he appears by pleader, and shall, if necessary, be corrected.

Procedure in regard to such evidence when completed.

(2) If the witness denies the correctness of any part of the evidence when the same is read over to him, the Magistrate or Sessions Judge may, instead of correcting the evidence, make a memorandum thereon of the objection made to it by the witness, and shall add such remarks as he thinks necessary.

(3) If the evidence is taken down in a language different from that in which it has been given, and the witness does not understand the language in which it is taken down, the evidence so taken down shall be interpreted to him in the language in which it was given, or in a language which he understands.

361. (1) Whenever any evidence is given in a language not understood by the accused, and he is present in person, it shall be interpreted to him in open Court in a language understood by him.

(2) If he appears by pleader, and the evidence is given in a language other than the language of the Court, and not understood by the pleader, it shall be interpreted to such pleader in that language.

(3) When documents are put in for the purpose of formal proof, it shall be in the discretion of the Court to interpret as much thereof as appears necessary.

362. (1) In every case in which a Presidency Magistrate imposes a fine exceeding two hundred rupees, or imprisonment for a term exceeding six months, he shall either take down the evidence of the witnesses with his own hand, or cause it to be taken down in writing from his dictation in open Court. All evidence so taken down shall be signed by the Magistrate, and shall form part of the record.

(2) Evidence so taken down shall ordinarily, be recorded in the form of a narrative, but the Magistrate may, in his discretion, take down, or cause to be taken down, any particular question or answer.

(3) Sentences passed under section 35 on the same occasion shall, for the purposes of this section, be considered as one sentence.

363. When a Sessions Judge or Magistrate has recorded the evidence of a witness, he shall also record such remarks (if any) as he thinks material respecting the demeanour of such witness whilst under examination.

364. (1) Whenever the accused is examined by any Magistrate, or by any Court other than a High Court established by Royal Charter, or the Chief Court of the Punjab "or the Chief Court of Lower Burma,"* the whole of such examination, including every question put to him and every answer given by him, shall be recorded in full in the language in which he is examined, or, if that is not

* In s. 361, the words quoted have been inserted by the Lower Burma Courts Act (VI. of 1900.—See s. 47 and the first Schedule of that Act.

practicable, in the language of the Court, or in English; and such record shall be shown or read to him, or, if he does not understand the language in which it is written, shall be interpreted to him in a language which he understands, and he shall be at liberty to explain or add to his answers.

(2) When the whole is made conformable to what he declares is the truth, the record shall be signed by the accused and the Magistrate or Judge of such Court, and such Magistrate or Judge shall certify under his own hand that the examination was taken in his presence and hearing, and that the record contains a full and true account of the statement made by the accused.

(3) In cases in which the examination of the accused is not recorded by the Magistrate or Judge himself, he shall be bound, unless he is a Presidency Magistrate, as the examination proceeds, to make a memorandum thereof in the language of the Court, or in English, if he is sufficiently acquainted with the latter language; and such memorandum shall be written and signed by the Magistrate or Judge with his own hand, and shall be annexed to the record. If the Magistrate or Judge is unable to make a memorandum as above required, he shall record the reason of such inability.

(4) Nothing in this section shall be deemed to apply to the examination of an accused person under section 263.

365.* Every High Court established by Royal Charter, the Record of evidence in High Chief Court of the Punjab, "and the Court, Chief Court of Lower Burma"* may, from time to time, by general rule, prescribe the manner in which evidence shall be taken down in cases coming before the Court, and the Judges of such Court shall take down the evidence or the substance thereof in accordance with the rule (if any) so prescribed.

CHAPTER XXVI.

OF THE JUDGMENT.

366. (1) The judgment in every trial in any Criminal Court of original jurisdiction shall be pronounced or the substance of such judgment shall be explained.—
 Mode of delivering judgment.

* In s. 365, the word "and" after the word "Charter" has been repealed, and the words quoted have been inserted, by the Lower Burma Courts Act (VI. of 1900).—See s. 47 and the first Schedule thereof.

(a) in open Court either immediately after the termination of the trial, or at some subsequent time of which notice shall be given to the parties or their pleaders, and

(b) in the language of the Court, or in some other language which the accused or his pleader understands:

Provided that the whole judgment shall be read out by the presiding Judge if he is requested so to do either by the prosecution or the defence.

(2) The accused shall, if in custody, be brought up, or, if not in custody, be required by the Court to attend, to hear judgment delivered, except where his personal attendance during the trial has been dispensed with, and the sentence is one of fine only, or he is acquitted, in either of which cases it may be delivered in the presence of his pleader.

(3) No judgment delivered by any Criminal Court shall be deemed to be invalid by reason only of the absence of any party or his pleader on the day or from the place notified for the delivery thereof, or of any omission to serve, or defect in serving, on the parties or their pleaders, or any of them, the notice of such day and place.

(4) Nothing in this section shall be construed to limit in any way the extent of the provisions of section 537.

367. (1) Every such judgment shall, except as otherwise expressly provided by this Code, be written by the presiding officer of the Court in the language of the Court, or in English; and shall contain the point or points for determination, the decision thereon, and the reasons for the decision; and shall be dated and signed by the presiding officer in open Court at the time of pronouncing it.

(2) It shall specify the offence (if any) of which, and the section of the Indian Penal Code* or other law under which, the accused is convicted, and the punishment to which he is sentenced.

(3) When the conviction is under the Indian Penal Code,* and it is doubtful under which of two sections, or under which of two parts of the same section of that Code,* the offence falls, the Court shall distinctly express the same, and pass judgment in the alternative.

* Act XLV. of 1860.

(4) If it be a judgment of acquittal, it shall state the offence of which the accused is acquitted, and direct that he be set at liberty.

(5) If the accused is convicted of an offence punishable with death, and the Court sentences him to any punishment other than death, the Court shall, in its judgment, state the reason why sentence of death was not passed:

Provided that, in trials by jury, the Court need not write a judgment, but the Court of Session shall record the heads of the charge to the jury.

368. (1) When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead.
Sentence of death.

(2) No sentence of transportation shall specify the place to which the person sentenced is to be transported.
Sentence of transportation.

369. No Court other than a High Court, when it has signed its judgment, shall alter or review the same, except as provided in sections 395 and 484, or to correct a clerical error.
Court not to alter judgment.

370. Instead of recording a judgment in manner hereinbefore provided, a Presidency Magistrate shall record the following particulars—
Presidency Magistrate's judgment.

- (a) the serial number of the case;
- (b) the date of the commission of the offence;
- (c) the name of the complainant (if any);
- (d) the name of the accused person and (except in the case of an European British subject) his parentage and residence;
- (e) the offence complained of or proved;
- (f) the plea of the accused and his examination (if any);
- (g) the final order;
- (h) the date of such order; and,
- (i) in all cases in which the Magistrate inflicts imprisonment or fine exceeding two hundred rupees, or both, a brief statement of the reasons for the conviction.

371. (1) On the application of the accused, a copy of the judgment, or, when he so desires, a translation of the judgment, shall be given to him without delay. Such copy shall, in any case other than a summons-case, be given free of cost.

(2) In trials by jury in a Court of Session, a copy of the heads of the charge to the jury shall, on the application of the accused, be given to him without delay and free of cost.

(3) When the accused is sentenced to death by a Sessions Judge, such Judge shall further inform him of the period within which, if he wishes to appeal, his appeal should be preferred.

372. The original judgment shall be filed with the record of proceedings, and, where the original is recorded in a different language from that of the Court, and the accused so requires, a translation thereof into the language of the Court, shall be added to such record.

373. In cases tried by the Court of Session, the Court shall forward a copy of its finding and sentence (if any) to the District Magistrate within the local limits of whose jurisdiction the trial was held.

CHAPTER XXVII.

OF THE SUBMISSION OF SENTENCES FOR CONFIRMATION.

374. When the Court of Session passes sentence of death, the proceedings shall be submitted to the High Court,* and the sentence shall not be executed unless it is confirmed by the High Court.

375 (1) If, when such proceedings are submitted, the High Court thinks that a further inquiry should be made into, or additional evidence taken upon, any point bearing upon the guilt or innocence of the convicted person, it may make such inquiry

* See Sch. V., Form XXXIV., *infra*.

or take such evidence itself, or direct it to be made or taken by the Court of Session.

(2) Such inquiry shall not be made, nor shall such evidence be taken, in the presence of jurors or assessors, and, unless the High Court otherwise directs, the presence of the convicted person may be dispensed with when the same is made or taken.

(3) When the inquiry and the evidence (if any) are not made and taken by the High Court, the result of such inquiry and the evidence shall be certified to such Court.

Power of High Court to confirm sentence or annul conviction.

376. In any case submitted under section 374, whether tried with the aid of assessors or by jury, the High Court—

(a) may confirm the sentence, or pass any other sentence warranted by law, or

(b) may annul the conviction, and convict the accused of any offence of which the Sessions Court might have convicted him, or order a new trial on the same or an amended charge, or

(c) may acquit the accused person :

Provided that no order of confirmation shall be made under this section until the period allowed for preferring an appeal has expired, or, if an appeal is presented within such period, until such appeal is disposed of.

377. In every case so submitted, the confirmation of the sentence, or any new sentence or order passed by the High Court, shall, when such Court consists of two or more Judges, be made, passed, and signed by at least two of them.

378. When any such case is heard before a Bench of Judges and such Judges are equally divided in opinion, the case, with their opinions thereon, shall be laid before another Judge, and such Judge, after such hearing as he thinks fit, shall deliver his opinion, and the judgment or order shall follow such opinion.

379. In cases submitted by the Court of Session to the High Court for the confirmation of a sentence of death, the proper officer of the High Court shall, without delay, after the order of confirmation or other order has been made by the High

Court, send a copy of the order, under the seal of the High Court, and attested with his official signature, to the Court of Session.

380. Where proceedings are submitted to a Magistrate of the first class or a sub-divisional Magistrate as provided by section 562, such Magistrate may thereupon pass such sentence or make such order as he might have passed or made if the case had originally been heard by him, and, if he thinks further inquiry or additional evidence on any point to be necessary, he may make such inquiry or take such evidence himself, or direct such inquiry or evidence to be made or taken.

Procedure in cases submitted by Magistrate not empowered to act under section 562.

CHAPTER XXVIII.

OF EXECUTION.

381. When a sentence of death passed by a Court of Session is submitted to the High Court for confirmation, such Court of Session shall, on receiving the order of confirmation or other order of the High Court thereon, cause such order to be carried into effect by issuing a warrant,* or taking such other steps as may be necessary.

382. If a woman sentenced to death is found to be pregnant, the High Court shall order the execution of the sentence to be postponed, and may, if it thinks fit, commute† the sentence to transportation for life.

383. Where the accused is sentenced to transportation or imprisonment in cases other than those provided for by section 381, the Court passing the sentence shall forthwith forward a warrant to the jail in which he is, or is to be, confined, and, unless the accused is already confined in such jail, shall forward him to such jail with the warrant.

384. Every warrant for the execution of a sentence of imprisonment shall be directed to the officer in charge of the jail or other place in which the prisoner is, or is to be, confined.

Execution of sentences of transportation or imprisonment in other cases.

Postponement of capital sentence on pregnant woman.

Direction of warrant for execution.

* See Sch., V. Forms XXXV. and XXXVI, *infra*.

† See Sch., V. Form XXXVI., *infra*.

Warrant with whom to be lodged.

385. When the prisoner is to be confined in a jail, the warrant shall be lodged with the jailor.

386.* Whenever an offender is sentenced to pay a fine, the Court passing the sentence may, in its discretion, issue a warrant for the levy of the amount by distress and sale of any moveable property belonging to the offender, although the sentence directs that, in default of payment of the fine, the offender shall be imprisoned.

387.* Such warrant may be executed within the local limits of the jurisdiction of such Court, and it shall authorize the distress and sale of any such property without such limits when endorsed by the District Magistrate or Chief Presidency Magistrate within the local limits of whose jurisdiction such property is found.

388.* (1) When an offender has been sentenced to fine only, and to imprisonment in default of payment of the fine, and the Court issues a warrant under section 386, it may suspend the execution of the sentence of imprisonment, and may release the offender on his executing a bond, with or without sureties, as the Court thinks fit, conditioned for his appearance before such Court on the day appointed for the return to such warrant, such day not being more than fifteen days from the time of executing the bond: and, in the event of the fine not having been realized, the Court may direct the sentence of imprisonment to be carried into execution at once.

(2) In any case in which an order for the payment of money has been made, on non-recovery of which imprisonment may be awarded, and the money is not paid forthwith, the Court may require the person ordered to make such payment to enter into a bond as prescribed in sub-section (1), and, in default of his so doing, may at once pass sentence of imprisonment as if the money had not been recovered.

* The provisions of ss. 386 to 389 have been declared to apply to fine imposed (1) under the Andaman and Nicobar Islands Regulation (III. of 1876) [see s. 35 as amended by the Andaman and Nicobar Islands Regulation (I. of 1884), s. 7]: and (2) under the Arakan Hill District Laws Regulation (IX. of 1874) (see s. 18 of that Regulation).

389.* Every warrant for the execution of any sentence may be issued either by the Judge or Magistrate who passed the sentence, or by his successor in office.

Who may issue warrant.

390. When the accused is sentenced to whipping only, the sentence shall be executed at such place and time as the Court may direct.

Execution of sentence of whipping only.

391. (1) When the accused is sentenced to whipping in addition to imprisonment in a case which is subject to appeal, the whipping shall not be inflicted until fifteen days from the date of the sentence, or, if an appeal is made within that time, until the sentence is confirmed by the Appellate Court ; but the whipping shall be inflicted as soon as practicable after the expiry of the fifteen days, or, in case of an appeal, as soon as practicable after the receipt of the order of the Appellate Court confirming the sentence.

Execution of sentence of whipping in addition to imprisonment.

(2) The whipping shall be inflicted in the presence of the officer in charge of the jail unless the Judge or Magistrate orders it to be inflicted in his own presence.

(3) No accused person shall be sentenced to whipping in addition to imprisonment when the term of imprisonment to which he is sentenced is less than three months.

392. (1) In the case of a person of or over sixteen years of age, whipping shall be inflicted with a light ratan not less than half an inch in diameter, in such mode, and on such part of the person, as the Local Government directs ; and, in the case of a person under sixteen years of age, it shall be inflicted in such mode, and on such part of the person, and with such instrument as the Local Government directs.†

Mode of inflicting punishment.

(2) In no case shall such punishment exceed thirty stripes, “and, in the case of a person under sixteen years of age, it shall not exceed fifteen stripes.”‡

Limit of number of stripes.

* See foot-note on last-preceding page.

† For manner in which whipping shall be inflicted—

(1) in Burma, see *Burma Gazette*, 1898, Pt. I., p. 307 ;

(2) in Assam, see *Assam Gazette*, 1899, Pt. II., p. 384 ;

(3) in the Punjab, see *Punjab Gazette*, 1899, Pt. I., p. 314.

‡ These words in s. 392 (2) have been added by the Whipping Act (IV. of 1909), s. 7.

393. No sentence of whipping shall be executed by instalments; and none of the following persons shall be punishable with whipping (namely)—

Not to be executed by instalments.
Exemptions.

(a) females;

(b) males sentenced to death, or to transportation, or to penal servitude, or to imprisonment for more than five years;

(c) males whom the Court considers to be more than forty-five years of age.

394. (1) The punishment of whipping shall not be inflicted unless a medical officer, if present, certifies, or, if there is not a medical officer present, unless it appears to the Magistrate or officer present, that the offender is in a fit state of health to undergo such punishment.

Whipping not to be inflicted unless a medical officer, if present, certifies, or, if there is not a medical officer present, unless it appears to the Magistrate or officer present, that the offender is in a fit state of health to undergo such punishment.

(2) If, during the execution of a sentence of whipping, a medical officer certifies, or it appears to the Magistrate or officer present, that the offender is not in a fit state of health to undergo the remainder of the sentence, the whipping shall be finally stopped.

Stay of execution.

395. (1) In any case in which, under section 394, a sentence of whipping is, wholly or partially, prevented from being executed, the offender shall be kept in custody until the Court which passed the sentence can revise it; and the said Court may, at its discretion, either remit such sentence, or sentence the offender, in lieu of whipping, or in lieu of so much of the sentence of whipping as was not executed, to imprisonment for any term not exceeding twelve months, which may be in addition to any other punishment to which he may have been sentenced for the same offence.

Procedure if punishment cannot be inflicted under section 394.

(2) Nothing in this section shall be deemed to authorize any Court to inflict imprisonment for a term exceeding that to which the accused is liable by law, or that which the said Court is competent to inflict.

396. (1) When sentence is passed under this Code on an escaped convict, such sentence, if of death, fine, or whipping, shall, subject to the provisions hereinbefore contained, take effect, immediately, and,

Execution of sentences on escaped convicts.

if of imprisonment, penal servitude, or transportation, shall take effect according to the following rules, that is to say—

(2) if the new sentence is severer in its kind than the sentence which such convict was undergoing when he escaped, the new sentence shall take effect immediately;

(3) when the new sentence is not severer in its kind than the sentence the convict was undergoing when he escaped, the new sentence shall take effect after he has suffered imprisonment, penal servitude, or transportation, as the case may be, for a further period equal to that which, at the time of his escape, remained unexpired of his former sentence.

Explanation.—For the purposes of this section—

(a) a sentence of transportation or penal servitude shall be deemed severer than a sentence of imprisonment;

(b) a sentence of imprisonment with solitary confinement shall be deemed severer than a sentence of the same description of imprisonment without solitary confinement; and

(c) a sentence of rigorous imprisonment shall be deemed severer than a sentence of simple imprisonment with or without solitary confinement.

397. When a person already undergoing a sentence of imprisonment, penal servitude, or transportation is sentenced to imprisonment, penal servitude, or transportation, such imprisonment, penal servitude or transportation shall commence at the expiration of the imprisonment, penal servitude, or transportation to which he has been previously sentenced:

Provided that, if he is undergoing a sentence of imprisonment, and the sentence on such subsequent conviction is one of transportation, the Court may, in its discretion, direct that the latter sentence shall commence immediately or at the expiration of the imprisonment to which he has been previously sentenced.

398. (1) Nothing in section 396 or section 397 shall be held to excuse any person from any part of the punishment to which he is liable upon his former or subsequent conviction.

(2) When an award of imprisonment in default of payment of a fine is annexed to a substantive sentence of imprisonment, or

to a sentence of transportation or penal servitude for an offence punishable with imprisonment, and the person undergoing the sentence is, after its execution, to undergo a further substantive sentence, or further substantive sentences, of imprisonment, transportation, or penal servitude, effect shall not be given to the award of imprisonment in default of payment of the fine until the person has undergone the further sentence or sentences.

399.* (1) When any person under the age of fifteen years is sentenced by any Criminal Court to imprisonment for any offence, the Court may direct that such person, instead of being imprisoned in a criminal jail, shall be confined in any reformatory established by the Local Government as a fit place for confinement, in which there are means of suitable discipline and of training in some branch of useful industry, or which is kept by a person willing to obey such rules as the Local Government prescribes with regard to the discipline and training of persons confined therein.

(2) All persons confined under this section shall be subject to the rules so prescribed.

(3) This section shall not apply to any place in which the Reformatory Schools Act, 1897,† is for the time being in force.

400. When a sentence has been fully executed, the officer executing it shall return the warrant to the Court from which it issued, with an endorsement under his hand certifying the manner in which the sentence has been executed.

CHAPTER XXIX.

OF SUSPENSIONS, REMISSIONS, AND COMMUTATIONS OF SENTENCES.

401. (1) When any person has been sentenced to punishment for an offence, the Governor-General in Council or the Local Government may at any time, without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his

* S. 399 is only in force in Coorg and the Punjab.—See ss. 1 (3) and 3 of the Reformatory Schools Act (VIII. of 1897), and, *supra*, s. 3 (1). It will cease to be in force in those provinces also on the extension to them of that Act.—See s. 3 of the Act.

† Act VIII of 1897.

sentence, or remit the whole or any part of the punishment to which he has been sentenced.

(2) Whenever an application is made to the Governor-General in Council or the Local Government for the suspension or remission of a sentence, the Governor-General in Council or the Local Government, as the case may be, may require the presiding Judge of the Court, before or by which the conviction was had or confirmed, to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion.

(3) If any condition on which a sentence has been suspended or remitted, is in the opinion of the Governor-General in Council or of the Local Government, as the case may be, not fulfilled, the Governor-General in Council or the Local Government may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any police-officer without warrant, and remanded to undergo the unexpired portion of the sentence.

(4) The condition on which a sentence is suspended or remitted under this section may be one to be fulfilled by the person in whose favour the sentence is suspended or remitted, or one independent of his will.

(5) Nothing herein contained shall be deemed to interfere with the right of Her Majesty to grant pardons, reprieves, respites, or remissions of punishment.

(6) The Governor-General in Council and the Local Government may, by general rules or special orders, give directions as to the suspension of sentences and the conditions on which petitions should be presented and dealt with.

402. The Governor-General in Council or the Local Government may, without the consent of the person sentenced, commute any one of the following sentences for any other mentioned after it—

death, transportation, penal servitude, rigorous imprisonment for a term not exceeding that to which he might have been sentenced, simple imprisonment for a like term, fine.

CHAPTER XXX.

OF PREVIOUS ACQUITTALS OR CONVICTIONS.

403. (1) A person who has once been tried by a Court of competent jurisdiction for an offence, acquitted not to be tried for and convicted or acquitted of such offence, shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under section 236, or for which he might have been convicted under section 237.

(2) A person acquitted or convicted of any offence may be, afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under section 235, sub-section (1).

(3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence if the consequence had not happened, or were not known to the Court to have happened, at the time when he was convicted.

(4) A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(5) Nothing in this section shall affect the provisions of section 26 of the General Clauses Act, 1897,* or of section 188 of this Code.

Explanation.—The dismissal of a complaint, the stopping of proceedings under section 249, the discharge of the accused or any entry made upon a charge under section 273, is not an acquittal for the purposes of this section.

Illustrations.

(a.) A is tried upon a charge of theft as a servant and acquitted: He cannot afterwards, while the acquittal remains in force, be charged with theft as a servant, or, upon the same facts, with theft simply, or with criminal breach of trust.

* Act X. of 1897.

(b.) *A* is tried upon a charge of murder and acquitted. There is no charge of robbery; but it appears from the facts that *A* committed robbery at the time when the murder was committed; he may afterwards be charged with, and tried for, robbery.

(c.) *A* is tried for causing grievous hurt and convicted. The person injured afterwards dies: *A* may be tried again for culpable homicide.

(d.) *A* is charged before the Court of Session and convicted of the culpable homicide of *B*. *A* may not afterwards be tried on the same facts for the murder of *B*.

(e.) *A* is charged by a Magistrate of the first class with, and convicted by him of, voluntarily causing hurt to *B*: *A* may not afterwards be tried for voluntarily causing grievous hurt to *B* on the same facts, unless the case comes within paragraph 3 of the section.

(f.) *A* is charged by a Magistrate of the second class with, and convicted by him of, theft of property from the person of *B*: *A* may be subsequently charged with, and tried for, robbery on the same facts.

(g.) *A*, *B*, and *C* are charged by a Magistrate of the first class with, and convicted by him of, robbing *D*: *A*, *B*, and *C* may afterwards be charged with, and tried for, dacoity on the same facts.

PART VII.

OF APPEAL, REFERENCE, AND REVISION.

CHAPTER XXXI.—OF APPEALS.*

404. No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code, or by any other law for the time being in force.

Unless otherwise provided
no appeal to lie.

405. Any person, whose application under section 89 for the delivery of property or the proceeds of the sale thereof has been rejected by any Court, may appeal to the Court to which appeals ordinarily lie from the sentences of the former Court.

Appeal from order reject-
ing application for restora-
tion of attached property.

406. Any person ordered by a Magistrate other than the District Magistrate or a Presidency Magistrate to give security for good behaviour under section 118 may appeal to the District Magistrate.

Appeal from order requir-
ing security for good beha-
viour.

* For limitation of appeals, see now the Indian Limitation Act (IX. of 1908), the First Schedule, arts. 150, 154, 155, and 157.—See s. 32 and the Third Schedule of that Act.

407. (1) Any person convicted on a trial held by any Magistrate of the second or third class, or any person sentenced under section 349 by a Sub-divisional Magistrate of the second class, may appeal to the District Magistrate.

(2) The District Magistrate may direct that any appeal under this section, or any class of such appeals shall be heard by any Magistrate of the first class subordinate to him, and empowered by the Local Government to hear such appeals, and thereupon such appeal or class of appeals may be presented to such subordinate Magistrate, or, if already presented to the District Magistrate, may be transferred to such subordinate Magistrate. The District Magistrate may withdraw from such Magistrate any appeal or class of appeals so presented or transferred.

408.* Any person convicted on a trial held by an Assistant Sessions Judge, a District Magistrate, or other Magistrate of the first class, or any person sentenced under section 349 by a Magistrate of the first class, may appeal to the Court of Session :

Provided as follows :—

- (a) Any European British subject so convicted may, at his option, appeal either to the High Court or the Court of Session ;
- (b) when in any case an Assistant Sessions Judge or a Magistrate specially empowered under section 30 passes any sentence of imprisonment for a term exceeding four years, or any sentence of transportation, the appeal shall lie to the High Court ;
- (c) when any person is convicted by a Magistrate of an offence under section 124A of the Indian Penal Code,† the appeal shall lie to the High Court.

* As to appeals from sentences of District Magistrates in Upper Burma in cases other than those affecting European British subjects see the Upper Burma Criminal Justice Regulation (V. of 1892), Sch., ss. X. and XVII.

Notwithstanding the provisions of s. 408 in places where the Punjab Frontier Crimes Regulation (IV. of 1887), is in force, appeals lie to the Chief Court, and not to a Court of Session.—See s. 7 (2) of that Regulation.

† Act XLV. of 1860.

409. An appeal to the Court of Session or Sessions Judge shall be heard by the Sessions Judge, or Appeals to Court of Session shall be heard by the Sessions Judge, or how heard. by an Additional Sessions Judge.

410. Any person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge may Appeal from sentence of Court of Session. appeal to the High Court.

411. Any person convicted on a trial held by a Presidency Magistrate may appeal to the High Court Appeal from sentence of Presidency Magistrate. if the Magistrate has sentenced him to imprisonment for a term exceeding six months, or to fine exceeding two hundred rupees.

412. Notwithstanding anything hereinbefore contained, where No appeal in certain cases an accused person has pleaded guilty and when accused pleads guilty. has been convicted by a Court of Session or any Presidency Magistrate or Magistrate of the first class on such plea, there shall be no appeal except as to the extent or legality of the sentence.

413. Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person No appeal in petty cases. in cases in which a Court of Session or the District Magistrate or other Magistrate of the first class passes a sentence of imprisonment not exceeding one month only, or of fine not exceeding fifty rupees only, or of whipping only.

Explanation.—There is no appeal from a sentence of imprisonment passed by such Court or Magistrate in default of payment of fine when no substantive sentence of imprisonment has also been passed.

414.* Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person No appeal from certain summary convictions. in any case tried summarily in which a Magistrate empowered to act under section 260 passes a sentence of imprisonment not exceeding three months only, or of fine not exceeding two hundred rupees only, or of whipping only.

415. An appeal may be brought against any sentence referred to in section 413 or section 414 by which any Proviso to sections 413 and 414. two or more of the punishments therein

* As to restrictions in appeals in Upper Burma except those affecting European British subjects, see the Upper Burma Criminal Justice Regulation (V. of 1892), Sch., ss. XI. and XVII.

mentioned are combined, but no sentence which would not otherwise be liable to appeal shall be appealable merely on the ground that the person convicted is ordered to find security to keep the peace.

Explanation.—A sentence of imprisonment in default of payment of fine is not a sentence by which two or more punishments are combined within the meaning of this section.

416. Nothing in sections 413 and 414 applies to appeals from
Saving of sentences on European British subjects. sentences passed under Chapter XXXIII.
on European British subjects.

417. The Local Government may direct the Public Prosecutor
Appeal on behalf of Gov- to present an appeal to the High Court
ernment in case of acquittal. from an original or appellate order of
 acquittal passed by any Court other than a High Court.

418. An appeal may lie on a matter of fact as well as a matter
Appeal on what matters of law, except where the trial was by jury,
admissible. in which case the appeal shall lie on a
 matter of law only.

Explanation.—The alleged severity of a sentence shall, for the purposes of this section, be deemed to be a matter of law.

419. Every appeal shall be made in the form of a petition in
Petition of appeal. writing presented by the appellant or his
 pleader, and every such petition shall
 (unless the Court to which it is presented otherwise directs) be accompanied by a copy of the judgment or order appealed against, and, in cases tried by a jury, a copy of the heads of the charge recorded under section 367.

420. If the appellant is in jail, he may present his petition of
Procedure when appellant appeal and the copies accompanying the
in jail. same to the officer in charge of the jail,
 who shall thereupon forward such petition and copies to the proper Appellate Court.

421. (1) On receiving the petition and copy under section 419
Summary dismissal of ap- or section 420, the Appellate Court shall
peal. peruse the same, and, if it considers that
 there is no sufficient ground for interfering, it may dismiss the appeal summarily :

Provided that no appeal presented under section 419 shall be dismissed unless the appellant or his pleader has had a reasonable opportunity of being heard in support of the same.

(2) Before dismissing an appeal under this section, the Court may call for the record of the case, but shall not be bound to do so.

422. If the Appellate Court does not dismiss the appeal summarily, it shall cause notice to be given to the appellant or his pleader, and to such officer as the Local Government may appoint in this behalf, of the time and place at which such appeal will be heard, and shall, on the application of such officer, furnish him with a copy of the grounds of appeal ;

and, in case of appeals under section 417, the Appellate Court shall cause a like notice to be given to the accused.

423* (1) The Appellate Court shall then send for the record of the case, if such record is not already in Court. After perusing such record, and hearing the appellant or his pleader if he appears, and the Public Prosecutor if he appears, and, in case of an appeal under section 417, the accused if he appears, the Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may,—

(a) in an appeal from an order of acquittal, reverse such order, and direct that further inquiry be made, or that the accused be retried or committed for trial, as the case may be, or find him guilty, and pass sentence on him according to law ;

(b) in an appeal from a conviction, (1) reverse the finding and sentence, and acquit or discharge the accused, or order him to be retried by a Court of competent jurisdiction subordinate to such Appellate Court, or committed for trial, or (2) after the finding, maintaining the sentence, or, with or without altering the finding, reduce the sentence, or (3), with or without such reduction, and with or without altering the finding, alter the nature of the sentence but subject to the provisions of section 106, sub-section (3), not so as to enhance the same ;

* As to enhancement of punishment by Appellate Courts in Upper Burma and the Sonthal Parganas, except in cases affecting European British subjects, see respectively the Upper Burma Criminal Justice Regulation (V. of 1892), Sch., ss XIII and XVII., and the Sonthal Parganas Justice Regulation (V. of 1893) as modified up to 1st Oct. 1899, s. 4 (vi.).

(c) in an appeal from any other order, alter or reverse such order ;

(d) make any amendment or any consequential or incidental order that may be just or proper.

(2) Nothing herein contained shall authorize the Court to alter or reverse the verdict of a jury unless it is of opinion that such verdict is erroneous owing to a misdirection by the Judge, or to a misunderstanding on the part of the jury of the law as laid down by him.

424. The rules contained in Chapter XXVI. as to the judgment of a Criminal Court of original jurisdiction shall apply, so far as may be practicable, to the judgment of any Appellate Court other than a High Court:

Provided that, unless the Appellate Court otherwise directs, the accused shall not be brought up, or required to attend, to hear judgment delivered.

425. (1) Whenever a case is decided on appeal by the High Court under this chapter, it shall certify its judgment or order to the Court by which the finding, sentence, or order appealed against was recorded or passed. If the finding, sentence, or order was recorded or passed by a Magistrate other than the District Magistrate, the certificate shall be sent through the District Magistrate.

(2) The Court to which the High Court certifies its judgment or order shall thereupon make such orders as are conformable to the judgment or order of the High Court ; and, if necessary, the record shall be amended in accordance therewith.

426. (1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended, and, also, if he is in confinement, that he be released on bail, or on his own bond.

(2) The power conferred by this section on an Appellate Court may be exercised also by the High Court in the case of any appeal by a convicted person to a Court subordinate thereto.

(3) When the appellant is ultimately sentenced to imprisonment, penal servitude, or transportation, the time during which he is so released shall be excluded in computing the term for which he is so sentenced.

427. When an appeal is presented under section 417, the High Court may issue a warrant directing that the accused be arrested and brought before it or any subordinate Court, and the Court before which he is brought may commit him to prison pending the disposal of the appeal, or admit him to bail.

428. (1) In dealing with any appeal under this chapter, the Appellate Court may take further evidence, or direct it to be taken. Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons, and may either take such evidence itself or direct it to be taken by a Magistrate, or, when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

(3) Unless the Appellate Court otherwise directs, the accused or his pleader shall be present when the additional evidence is taken; but such evidence shall not be taken in the presence of jurors or assessors.

(4) The taking of evidence under this section shall be subject to the provisions of Chapter XXV. as if it were an inquiry.

429. When the Judges composing the Court of Appeal are equally divided in opinion, the case, with their opinions thereon, shall be laid before another Judge of the same Court, and such Judge, after such hearing (if any) as he thinks fit, shall deliver his opinion, and the judgment or order shall follow such opinion.

430. Judgments and orders passed by an Appellate Court upon appeal shall be final except in the cases provided for in section 417 and Chapter XXXII.

431. Every appeal under section 417 shall finally abate on the death of the accused, and every other appeal under this chapter (except an appeal from a sentence of fine) shall finally abate on the death of the appellant.

CHAPTER XXXII.

OF REFERENCE AND REVISION.

432. A Presidency Magistrate may, if he thinks fit, refer for the opinion of the High Court any question of law which arises in the hearing of any case pending before him, or may give judgment in any such case subject to the decision of the High Court on such reference, and, pending such decision, may either commit the accused to jail, or release him on bail to appear for judgment when called upon.

433. (1) When a question has been so referred, the High Court shall pass such order thereon as it thinks fit, and shall cause a copy of such order to be sent to the Magistrate by whom the reference was made, who shall dispose of the case conformably to the said order.

(2) The High Court may direct by whom the costs of such reference shall be paid.

434.* (1) When any person has, in a trial before a Judge of a High Court consisting of more Judges than one, and acting in the exercise of its original criminal jurisdiction, been convicted of an offence, the Judge, if he thinks fit, may reserve and refer for the decision of a Court consisting of two or more Judges of such Court any question of law which has arisen in the course of the trial of such person, and the determination of which would affect the event of the trial.

(2) If the Judge reserves any such question, the person convicted shall, pending the decision thereon, be remanded to jail, or, if the Judge

* As to review in certain criminal cases by the Chief Court of Lower Burma, when no reference has been made under s. 434, see s. 12 of the Lower Burma Courts Act (VI. of 1900).

thinks fit, be admitted to bail; and the High Court shall have power to review the case, or such part of it as may be necessary, and finally determine such question, and thereupon to alter the sentence passed by the Court of original jurisdiction, and to pass such judgment or order as the High Court thinks fit.

435.* (1) The High Court or any Sessions Judge or District Magistrate, or any Sub-divisional Magistrate empowered by the Local Government in this behalf, may call for and examine the record of any proceeding, before any inferior Criminal Court situate within the local limits of its or his jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality, or propriety of any finding, sentence, or order recorded or passed, and as to the regularity of any proceedings of such inferior Court.

(2) If any Sub-divisional Magistrate acting under sub-section (1) considers that any such finding, sentence, or order is illegal or improper, or that any such proceedings are irregular, he shall forward the record, with such remarks thereon as he thinks fit, to the District Magistrate.

(3) Orders made under sections 143 and 144 and proceedings under Chapter XII. and section 176 are not proceedings within the meaning of this section.

(4) If an application under this section has been made either to the Sessions Judge or District Magistrate, no further application shall be entertained by the other of them.

436.* When, on examining the record of any case under section 435 or otherwise, the Sessions Judge or District Magistrate considers that such case is triable exclusively by the Court of Session, and that an accused person has been improperly discharged by the inferior Court, the Sessions Judge or District Magistrate may cause him to be arrested, and may thereupon, instead of directing a fresh inquiry, order him to be committed for trial upon the matter of which he has been, in the opinion of the Sessions Judge or District Magistrate, improperly discharged :

* In the Sonthal Parganas, the Court of Session shall not exercise any of the powers exercised by ss. 435 to 438.—*See* the Sonthal Parganas Justice Regulation (V. of 1893), s. 4, as modified up to 1st October 1899.

Provided as follows :—

- (a) That the accused has had an opportunity of showing cause to such Judge or Magistrate why the commitment should not be made ;
- (b) that, if such Judge or Magistrate thinks that the evidence shows that some other offence has been committed by the accused, such Judge or Magistrate may direct the inferior Court to inquire into such offence.

437.* On examining any record under section 435 or otherwise, the High Court or the Sessions Judge may direct the District Magistrate, by himself or by any of the Magistrates subordinate to him, to make, and the District Magistrate may himself make, or direct any subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under section 203 or sub-section (3) of section 204, or into the case of any accused person who has been discharged.

438.* (1) The Sessions Judge or District Magistrate may, if he thinks fit, on examining, under section 435 or otherwise, the record of any proceeding, report for the orders of the High Court the result of such examination, and, when such report contains a recommendation that a sentence be reversed or altered, may order that the execution of such sentence be suspended, and, if the accused is in confinement, that he be released on bail, or on his own bond.

(2) An Additional Sessions Judge shall have and may exercise all the powers of a Sessions Judge under this chapter in respect of any case which may be transferred to him by the Sessions Judge.

439. (1) In the case of any proceeding the record of which has been called for by itself, or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 195, 423, 426, 427, and 428, or on a Court by section 338, and may enhance the sentence ; and, when the Judges composing the Court of Revision are equally divided in opinion, the case shall be disposed of in manner provided by section 429.

* See foot-note on p. 160, *supra*.

(2) No order under this section shall be made to the prejudice of the accused unless he has had an opportunity of being heard, either personally or by pleader, in his own defence.

(3) Where the sentence dealt with under this section has been passed by a Magistrate acting otherwise than under section 34, the Court shall not inflict a greater punishment for the offence which, in the opinion of such Court, the accused has committed than might have been inflicted for such offence by a Presidency Magistrate or a Magistrate of the first class.

(4) Nothing in this section applies to an entry made under section 273, or shall be deemed to authorize a High Court to convert a finding of acquittal into one of conviction.

(5) Where, under this Code, an appeal lies, and no appeal is brought, no proceedings by way of revision shall be entertained at the instance of the party who could have appealed.

440. No party has any right to be heard, either personally or by pleader, before any Court when exercising its powers of revision :
Optional with Court to hear parties.

Provided that the Court may, if it thinks fit, when exercising such powers, hear any party, either personally or by pleader, and that nothing in this section shall be deemed to affect section 439, sub-section (2).

441. When the record of any proceeding of any Presidency Magistrate is called for by the High Court under section 435, the Magistrate may submit with the record a statement setting forth the grounds of his decision or order and any facts which he thinks material to the issue; and the Court shall consider such statement before overruling or setting aside the said decision or order.
Statement by Presidency Magistrate of grounds of his decision to be considered by High Court.

442. When a case is revised under this chapter by the High Court, it shall, in manner hereinbefore provided by section 425, certify its decision or order to the Court by which the finding, sentence, or order revised was recorded or passed, and the Court or Magistrate to which the decision or order is so certified shall thereupon make such orders as are conformable to the decisions so certified; and, if necessary, the record shall be amended in accordance therewith.
High Court's order to be certified to lower Court or Magistrate.

PART VIII.—SPECIAL PROCEEDINGS.

CHAPTER XXXIII.

CRIMINAL PROCEEDINGS AGAINST EUROPEANS AND AMERICANS.*

443. No Magistrate unless he is a Justice of the Peace, and (except in the case of a District Magistrate or Presidency Magistrate) unless he is a Magistrate of the first class and an European British subject, shall inquire into or try any charge against an European British subject.

Magistrates who may inquire into and try charges against European British subjects.

444. No Judge presiding in a Court of Session, except the Sessions Judge to be an European British subject. Sessions Judge, shall exercise jurisdiction over an European British subject unless he himself is an European British subject; and, if he is an Assistant Sessions Judge, unless he has held the office of Assistant Sessions Judge for at least three years, and has been specially empowered in this behalf by the Local Government.

Assistant Sessions Judge to have held office for three years, and to be specially empowered.

445. Nothing in section 443 or section 444 shall prevent any Magistrate from taking cognizance of an offence committed by an European British subject in any case in which he could take cognizance of a like offence if committed by another person:

Cognizance of offence committed by European British subject.

Provided that, if he issues any process for the purpose of compelling the appearance of an European British subject accused of an offence, such process shall be made returnable before a Magistrate having jurisdiction to enquire into or try the case.

446. Notwithstanding anything contained in section 32 or section 34, no Magistrate other than a District Magistrate or Presidency Magistrate shall pass any sentence on an European British subject other than imprisonment for a term which may extend to three months, or fine which may extend to one

Sentences which may be passed by Provincial Magistrates.

* As to withdrawal from vagrants of their privileges as European British subjects, see s. 30 of the European Vagrancy Act (IX. of 1874) and s. 3 (1) of this Act, *supra*.

thousand rupees, or both, and a District Magistrate shall not pass any such sentence other than imprisonment for a term which may extend to six months, or fine which may extend to two thousand rupees, or both.

447. (1) When an European British subject is accused of an offence before a Magistrate, and such offence cannot, in the opinion of such Magistrate, be adequately punished by him, and is not punishable with death or with transportation for life, such Magistrate shall, if he thinks that the accused ought to be committed, commit him to the Court of Session, or, in the case of a Presidency Magistrate, to the High Court.*

(2) When the offence which appears to have been committed is punishable with death or with transportation for life, the commitment shall be to the High Court.

448. Where any person committed to the High Court under section 447 is charged with several offences of which one is punishable with death or transportation for life, and the others with a less punishment, and the High Court considers that he should not be tried for the offence punishable with death or transportation, the High Court may nevertheless try him for the other offences.

449. (1) Notwithstanding anything contained in section 31, no Court of Session shall pass on any European British subject any sentence other than a sentence of imprisonment for a term which may extend to one year or fine, or both.

(2) If, at any time after the commitment and before signing judgment, the presiding Judge thinks that the offence which appears to be proved cannot be adequately punished by such a sentence, he shall record his opinion to that effect, and transfer the case to the High Court. Such Judge may either himself bind over, or direct the committing Magistrate to bind over, the complainant and witnesses to appear before the High Court.

* The Chief Court of Lower Burma is the High Court for the whole of Burma (inclusive of the Shan States) in reference to proceedings against European British subjects and persons jointly charged with European British subjects.—See s. 8 (1) (a) of the Lower Burma Courts Act (VI. of 1900.)

450. (1) In trials of European British subjects before a High Jury or assessors before Court or Court of Session, if, before High Court or Court of Session. the first juror is called and accepted, or the first assessor is appointed, as the case may be, any such subject requires to be tried by a mixed jury, the trial shall be by a jury of which not less than half the number shall be Europeans or Americans, or both Europeans and Americans.

(2) When any such trial before a Court of Session would in the ordinary course be with the aid of assessors, the European British subject accused, or, where there are several European British subjects accused, all of them jointly, may, instead of claiming to be tried by a mixed jury under sub-section (1), require that not less than half the number of the assessors shall be Europeans or Americans, or both Europeans and Americans.

451. (1) In trials of European British subjects before a District Magistrate for any offence, any subject to claim jury before such subject may, in a summons-case, District Magistrate. before he is heard in his defence under section 244, or in a warrant-case before he enters on his defence under section 256, claim that the trial shall be by a jury composed in manner prescribed by section 450.

(2) If a claim is made under sub-section (1) in a summons case at the time when the Magistrate proceeds under section 244 to hear the accused, or in a warrant-case at the time when the Magistrate calls upon the accused under section 256 to enter upon the defence, the Magistrate shall forthwith issue the necessary orders for the trial by a jury as aforesaid.

(3) If such a claim is made at an earlier stage of the proceedings, the Magistrate shall issue such orders whenever it appears to him from the evidence recorded that there will be a sufficient case to go before a jury.

(4) In every such case the Magistrate shall, notwithstanding anything contained in section 242, before issuing any orders as aforesaid, frame a formal charge.

(5) The provisions of sections 211, 216, 217, 219, and 220 shall, so far as may be, apply for the purpose of securing the attendance of the complainant, the accused, and the witnesses at every trial to be held under this section.

(6) The provisions of this Code relating to the procedure in a trial by jury before a Court of Session shall, as nearly as may be, apply to every trial under this section as if the District Magistrate were a Sessions Judge, and the accused had been committed to his Court for trial.

(7) All Courts may construe any of the provisions referred to in sub-section (5) or sub-section (6), in so far as they are made applicable by those sub-sections, with such verbal alterations not affecting the substance as may be necessary or proper to adapt the same to the matter before them.

(8) Nothing in this section shall affect the power of the Magistrate to commit an accused person for trial under section 347 or section 447.

(9) If an accused person claims to be tried by jury under this section, and, in the opinion of the District Magistrate, there is reason to believe that a jury composed in manner prescribed by section 450 cannot be constituted for the trial before himself, or cannot be so constituted without an amount of delay, expense, or inconvenience which, under the circumstances of the case, would be unreasonable, he may, instead of issuing orders for the trial before himself under this section, transfer the case for trial to such other District Magistrate, or to such Sessions Judge, as the High Court may, from time to time, by rules made by it in this behalf and approved by the Local Government, or by special order, direct.

(10) When a case is transferred under this section to a Sessions Judge or District Magistrate, he shall, with all convenient speed, try it with the same powers (including the power of commitment) and according to the same procedure as if he were a District Magistrate acting under this section.

452. In any case in which an European British subject is accused jointly with a person not being an European British subject, and such European British subject is committed for trial before a High Court or Court of Session, such subject and person may be tried together, and the procedure on the trial shall be the same as it would have been had the European British subject been tried separately :

Provided that, if the European British subject requires under section 450 to be tried by a mixed jury or by a mixed set of assessors, and the Trial of European British subject and Native jointly accused. When Native may claim separate trial.

person not being an European British subject requires that he shall be tried separately, the latter person shall be tried separately in accordance with the provisions of Chapter XXIII.

453. (1) When any person claims to be dealt with as an European British subject, he shall state the grounds of such claim to the Magistrate before whom he is brought for the purposes of the inquiry or trial; and such Magistrate shall inquire into the truth of such statement, and allow the person making it a reasonable time within which to prove that it is true, and shall then decide whether he is or is not an European British subject, and shall deal with him accordingly. If any such person is convicted by such Magistrate, and appeals from such conviction, the burden of proving that the Magistrate's said decision was wrong shall lie upon him.

(2) When any such person is committed by the Magistrate for trial before the Court of Session, and such person, before such Court claims to be dealt with as an European British subject, such Court shall, after such further enquiry, if any, as it thinks fit, decide whether he is or is not an European British subject, and shall deal with him accordingly. If he is convicted by such Court, and appeals from such conviction, the burden of proving that the Court's said decision was wrong shall lie upon him.

(3) When the Court before which any person is tried decides that he is not an European British subject, such decision shall form a ground of appeal from the sentence or order passed in such trial.

454. (1) If an European British subject does not claim to be dealt with as such by the Magistrate before whom he is tried, or by whom he is committed, or if, when such claim has been made before and disallowed by, the committing Magistrate, it is not again made before the Court to which such subject is committed, he shall be held to have relinquished his right to be dealt with as such European British subject, and shall not assert it in any subsequent stage of the same case.

(2) Unless the Magistrate has reason to believe that any person brought before him is not an European British subject, the Magistrate shall ask such person whether he is such a subject or not.

455. Where a person, who is not an European British subject, is dealt with as such under this chapter, and does not object, the inquiry, commitment, trial, or sentence (as the case may be) shall not, by reason of such dealing, be invalid.

456. When any European British subject is unlawfully detained in custody by any person, such European British subject or any person on his behalf may apply to the High Court* which would have jurisdiction over such European British subject in respect of any offence com-

* Original and appellate criminal jurisdiction is exercised by the High Courts at Madras and Bombay and in the North-Western Provinces and Oudh over European British subjects in outlying provinces and places in British India as follows :—

By High Court at Madras in	{	Coorg.
		The Upper Godavari District of the Central Provinces.
By High Court at Bombay in	{	The Nagpur, Narbada, and Chatisgarh Divisions of the Central Provinces.
		The Pargana of Manpur in Central India.
By High Court, N.-W. P., in	{	Oudh
		The Jabalpur Division of the Central Provinces.
		The line of railway from Allahabad to Jabalpur, and the lands and buildings appurtenant thereto, other than the station at Satna.
		The Cantonment of Morar (since ceded to the Gwalior State)—See Notification No 2557-I. dated the 29th July 1876, <i>Gazette of India</i> , 1886, Pt. I., p 453.
		Ajmere and British Merwara.

[See Notification No 1203 dated the 23rd September 1874, *Gazette of India*, 1874, Pt. I., p. 484.]

The High Court at Fort William exercise original and appellate jurisdiction and has all the functions of a High Court under the Code in all criminal proceedings against European British subjects and persons charged with European British subjects in the Andaman and Nicobar Islands.—See Notification No. 77 dated 15th March 1878, *Gazette of India*, 1878, Pt. I., p. 132.

Original and appellate jurisdiction is also exercised by the High Courts at Fort William, Madras, and Bombay, and in the North-Western Provinces, over European British subjects, being Christians, resident in certain Native States, territories and Chiefships.—See Notification No. 178-J. dated 23rd September 1874, *Gazette of India*, 1874, Pt. I. p 485 ; No. 215-J. dated 18th December 1874. *Gazette of India*, 1874, Pt. I., p. 612 ; No. 119-J. and No. 120-J. dated 9th August 1875, *Gazette of India*, 1875, Pt. I., p. 404.

mitted by him at the place where he is detained, or to which he would be entitled to appeal from any conviction for any such offence, for an order directing the person detaining him to bring him before the High Court to abide such further order as it may pass.

457. The High Court, if it thinks fit, may, before issuing such order, inquire, on affidavit or otherwise, into the grounds on which it is applied for, and grant or refuse such application; or it may issue the order in the first instance, and when the person applying for it is brought before it, it may make such further order in the case as it thinks fit, after such inquiry (if any) as it thinks necessary.

458. The High Court may issue such orders throughout the Territories throughout which High Court may issue such orders. territories within the local limits of its appellate criminal jurisdiction, and such other territories as the Governor-General in Council may direct.

459. (1) Unless there is something repugnant in the context, all enactments heretofore or hereafter made by the Governor-General in Council, which confer on Magistrates or on the Court of Session jurisdiction over offences shall be deemed to apply to European British subjects, although such persons are not expressly referred to therein.

(2) Nothing in this section shall be deemed to authorize any Court to exceed the limits prescribed by this chapter as to the amount of punishment which it may inflict on an European British subject, or to confer jurisdiction on any Magistrate or any Judge presiding in a Court of Session, not being a Justice of the Peace.

460. In every case triable by jury or with the aid of assessors in which an European (not being an European British subject) or an American is the accused person, or one of the accused persons, not less than half the number of jurors or assessors shall, if practicable, and if such European or American so claims, be Europeans or Americans.

461. Whenever an European or American is charged before the Court of Session jointly, with a person not an European or American, and in compliance with a claim made under section 460, is tried by a jury, or with the aid of a set of assessors,

of which at least one-half consists of Europeans and Americans, the latter person shall, if he so claims, be tried separately.

462. (1) When a trial is to be held before the Court of Session in which the accused person, Summoning and empanel-
ling jurors under section 450, or one of the accused persons, is entitled
451, or 460. to be tried by a jury constituted under
the provisions of section 450 or section 460, or before the Court
of a District Magistrate or Sessions Judge proceeding under section
451, the Court shall, three days at least before the day fixed for
holding such trial, cause to be summoned, in the manner herein-
before prescribed, as many European and American jurors as are
required for the trial.

(2) The Court shall also, at the same time, in like manner, cause to be summoned the same number of other persons named in the revised list unless such number of such other persons has been already summoned for trials by jury at that Session.

(3) From the whole number of persons returned, the jurors who are to constitute the jury shall be chosen by lot in the manner prescribed in section 276 until a jury containing the proper number of Europeans or Americans, or a number approaching thereto as nearly as practicable, has been obtained :

Provided that, in any case in which the proper number of Europeans and Americans cannot otherwise be obtained, the Court may, in its discretion, for the purpose of constituting the jury, summon any person excluded from the list on the ground of his being exempted under section 320.

463. Criminal proceedings against European British subjects, Conduct of criminal pro-
ceedings against European subjects, and Americans, before the
British subjects, &c. Court of Session and High Court, shall,
except as otherwise expressly provided, be conducted according to the provisions of this Code.

CHAPTER XXXIV.

LUNATICS.

464. (1) When a Magistrate holding an enquiry or a trial has reason to believe that the accused is of unsound mind, and consequently incapable of making his defence, the Magistrate shall enquire into the fact of such unsoundness, and shall cause such person to be examined by the Civil Surgeon of the district or such other medical officer as the Local Government directs, and thereupon shall examine such Surgeon or other officer as a witness, and shall reduce the examination to writing.

(2) If such Magistrate is of opinion that the accused is of unsound mind, and consequently incapable of making his defence, he shall postpone further proceedings in the case.

465. (1) If any person committed for trial before a Court of Session or a High Court appears to the Court at his trial to be of unsound mind, and consequently incapable of making his defence, the jury, or the Court with the aid of assessors, shall, in the first instance, try the fact of such unsoundness and incapacity, and if satisfied of the fact, shall pass judgment accordingly, and thereupon the trial shall be postponed.

(2) The trial of the fact of the unsoundness of mind and incapacity of the accused shall be deemed to be part of his trial before the Court.

466. (1) Whenever an accused person is found to be of unsound mind and incapable of making his defence, the Magistrate or Court, as the case may be, if the case is one in which bail may be taken, may release him on sufficient security being given that he shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, and for his appearance when required before the Magistrate or Court or such officer as the Magistrate or Court appoints in his behalf.

(2) If the case is one in which bail may not be taken, or if sufficient security is not given, the Magistrate or Court shall report the case to the Local Government, remanding the accused to custody pending

orders, and the Local Government may order the accused to be confined in a lunatic asylum jail, or other suitable place of safe custody, and the Magistrate or Court shall give effect to such order.

467. (1) Whenever an inquiry or a trial is postponed under section 464 or section 465, the Magistrate or Court, as the case may be, may at any time resume the enquiry or trial, and require the accused to appear or be brought before such Magistrate or Court.

(2) When the accused has been released under section 466, and the sureties for his appearance produce him to the officer whom the Magistrate or Court appoints in his behalf, the certificate of such officer that the accused is capable of making his defence shall be receivable in evidence.

468. (1) If, when the accused appears or is again brought before the Magistrate or the Court, as the case may be, the Magistrate or Court considers him capable of making his defence, the inquiry or trial shall proceed.

(2) If the Magistrate or Court considers the accused person to be still incapable of making his defence, the Magistrate or Court shall again act according to the provisions of section 464 or section 465, as the case may be.

469. When the accused appears to be of sound mind at the time of inquiry or trial, and the Magistrate is satisfied from the evidence given before him that there is reason to believe that the accused committed an act which, if he had been of sound mind, would have been an offence, and that he was, at the time when the act was committed, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that it was wrong or contrary to law, the Magistrate shall proceed with the case, and, if the accused ought to be committed to the Court of Session or High Court, send him for trial before the Court of Session or High Court, as the case may be.

470.* Whenever any person is acquitted upon the ground that, at the time at which he is alleged to have committed an offence, he was, by reason of unsoundness of mind, incapable of knowing the nature

* Compare the Criminal Lunatics Act, 1800 (Stat. 39 & 40 Geo. III. c. 94.)

of the act alleged as constituting the offence, or that it was wrong or contrary to law, the finding shall state specifically whether he committed the act or not.

471. (1) Whenever such judgment states that the accused person committed the act alleged, the Magistrate or Court before whom or which the trial has been held shall, if such act would, but for the incapacity found, have constituted an offence, order such person to be kept in safe custody in such place and manner as the Magistrate or Court thinks fit, and shall report the case for the orders of the Local Government.

(2) The Local Government may order such person to be confined in a lunatic asylum, jail, or other suitable place of safe custody.

(3) The Governor-General in Council may, by general or special order, direct that any person whom the Local Government has ordered under this chapter to be confined in a lunatic asylum, jail, or other place of safe custody, shall be removed from the place where he is confined, to any lunatic asylum, jail, or other place of safe custody in British India.

(4) Local Government may empower the officer in charge of the jail, in which a person is confined under the provisions of section 466 or this section, to discharge all or any of the functions of the Inspector-General of Prisons under section 472, section 473, or section 474.

472. When any person is confined under the provisions of section 466 or section 471, the Inspector-General of Prisons, if such person is confined in a jail, or the visitors of the lunatic asylum, or any two of them if he is confined in a lunatic asylum, may visit him in order to ascertain his state or mind; and he shall be visited once at least in every six months by such Inspector-General, or by two of such visitors as aforesaid; and such Inspector-General or visitors shall make a special report to the Local Government as to the state of mind of such person.

473. If such person is confined under the provisions of section 466, and such Inspector-General or visitors shall certify that, in his or their opinion, such person is capable of making his defence.

making his defence, he shall be taken before the Magistrate or Court, as the case may be, at such time as the Magistrate or Court appoints, and the Magistrate or Court shall deal with such person under the provisions of section 468; and the certificate of such Inspector-General or visitors as aforesaid shall be receivable as evidence.

474. (1) If such person is confined under the provisions of section 466 or section 471, and such Inspector-General or visitors shall certify that, in his or their judgment, he may be discharged without danger of his doing injury to himself or to any other person, the Local Government may thereupon order him to be discharged, or to be detained in custody, or to be transferred to a public lunatic asylum if he has not been already sent to such an asylum; and, in case it orders him to be transferred to an asylum, may appoint a commission consisting of a judicial and two medical officers.

Procedure where lunatic confined under section 466 or 471 is declared fit to be discharged.

(2) Such commission shall make formal inquiry into the state of mind of such person, taking such evidence as is necessary, and shall report to the Local Government, which may order his discharge or detention as it thinks fit.

475. (1) Whenever any relative or friend of any person confined under the provisions of section 466 or section 471 desires that he shall be delivered over to his care and custody, the Local Government, upon the application of such relative or friend, and, on his giving security to the satisfaction of such Government that the person delivered shall be properly taken care of, and shall be prevented from doing injury to himself or to any other person, may order such person to be delivered to such relative or friends.

Delivery of lunatic to care of relative.

(2) Whenever such person is so delivered, it shall be upon condition that he shall be produced for the inspection of such officer and at such times as the Local Government directs.

(3) The provisions of sections 472 and 474 shall, *mutatis mutandis*, apply to persons delivered under the provisions of this section; and the certificate of the inspecting officer appointed under this section shall be receivable as evidence.

CHAPTER XXXV.

PROCEEDINGS IN CASE OF CERTAIN OFFENCES AFFECTING THE
ADMINISTRATION OF JUSTICE.

476. (1) When any Civil, Criminal, or Revenue Court is of opinion that there is ground for inquiry into any offence referred to in section 195, and committed before it, or brought under its notice in the course of a judicial proceeding, such Court, after making any preliminary inquiry that may be necessary, may send the case, for inquiry or trial, to the nearest Magistrate of the first class, and may send the accused in custody, or take sufficient security for his appearance, before such Magistrate; and may bind over any person to appear and give evidence on such inquiry or trial.

(2) Such Magistrate, shall thereupon proceed according to law, and as if upon complaint made and recorded under section 200, and may, if he is authorized under section 192 to transfer cases, transfer the inquiry or trial to some other competent Magistrate.

477. (1) Subject to the provisions of section 444, a Court of Session may charge a person for any offence referred to in section 195, and committed before it or brought under its notice in the course of a judicial proceeding, and may commit, or admit to bail and try, such person upon its own charge.

(2) Such Court may direct the Magistrate to cause the attendance of any witnesses for the purposes of the trial.

478. (1) When any such offence is committed before any Civil or Revenue Court, or brought under the notice of any Civil or Revenue Court in the course of a judicial proceeding, and the case is triable exclusively by the High Court or Court of Session, or such Civil or Revenue Court thinks that it ought to be tried by the High Court or Court of Session, such Civil or Revenue Court may, instead of sending the case under section 476 to a Magistrate for inquiry, itself complete the inquiry, and commit or hold to bail the accused person to take his trial before the High Court or Court of Session, as the case may be.

(2) For the purposes of an inquiry under this section, the Civil or Revenue Court may, subject to the provisions, of section 443,

exercise all the powers of a Magistrate; and its proceedings in such inquiry shall be conducted as nearly as may be in accordance with the provisions of Chapter XVIII., and shall be deemed to have been held by a Magistrate.

479. When any such commitment is made by a Civil or Revenue Court, the Court shall send the charge with the order of commitment and the record of the case to the Presidency Magistrate, District Magistrate, or other Magistrate authorized to commit for trial, and such Magistrate shall bring the case before the High Court or Court of Session, as the case may be, together with the witnesses for the prosecution and defence.

480. (1) When any such offence as is described in section 175, section 173, section 179, section 180, or section 228 of the Indian Penal Code,* is committed in the view or presence of any Civil, Criminal, or Revenue Court, the Court may cause the offender, whether he is an European British subject or not, to be detained in custody; † and, at any time before the rising of the Court on the same day, may, if it thinks fit, take cognizance of the offence, and sentence the offender to fine not exceeding two hundred rupees, and, in default of payment, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid.

(2) Nothing in section 443 or section 444 shall be deemed to apply to proceedings under this section.

481. (1) In every such case the Court shall record the facts constituting the offence, with the statement (if any) made by the offender, as well as the finding and sentence.

(2) If the offence is under section 228 of the Indian Penal Code* the record shall show the nature and stage of the judicial proceeding in which the Court interrupted or insulted was sitting, and the nature of the interruption or insult.

482. (1) If the Court in any case considers that a person accused of any of the offences referred to in section 480, and committed in its view or presence, should be imprisoned otherwise than in default of payment of

* Act XLV. of 1860.

† See Sch. V., Form XXXVIII., *infra*.

fine, or that a fine exceeding two hundred rupees should be imposed upon him, or such Court is, for any other reason, of opinion that the case should not be disposed of under section 480, such Court, after recording the facts constituting the offence and the statement of the accused as hereinbefore provided, may forward the case to a Magistrate having jurisdiction to try the same, and may require security to be given for the appearance of such accused person before such Magistrate, or, if sufficient security is not given, shall forward such person in custody to such Magistrate.

(2) The Magistrate to whom any case is forwarded under this section shall proceed to hear the complaint against the accused person in manner hereinbefore provided..

483. When the Local Government so directs, any Registrar or any Sub-Registrar appointed under the Indian Registration Act, 1877,* shall be deemed to be a Civil Court within the meaning of sections 480 and 482.

484. When any Court has, under section 480, adjudged an offender to punishment for refusing or omitting to do any thing which he was lawfully required to do, or for any intentional insult or interruption, the Court may, in its discretion, discharge the offender or remit the punishment on his submission to the order or requisition of such Court, or on apology being made to its satisfaction.

485. If any witness or person called to produce a document or thing before a Criminal Court refuses to answer such questions as are put to him, or to produce any document or thing in his possession or power which the Court requires him to produce, and does not offer any reasonable excuse for such refusal, such Court may, for reasons to be recorded in writing, sentence him to simple imprisonment, or by warrant† under the hand of the presiding Magistrate or Judge, commit him to the custody of an officer of the Court, for any term not exceeding seven days unless, in the meantime, such person consents to be examined and to answer, or to produce the document or thing. In the

* Act III. of 1877.

† See Sch. V., Form XXXIX., *infra*.

event of his persisting in his refusal, he may be dealt with according to the provisions of section 480 or section 482, and, in the case of a Court established by Royal Charter, shall be deemed guilty of a contempt.

486. (1) Any person sentenced by any Court under section 480 or section 485 may, notwithstanding anything hereinbefore contained, appeal to the Court to which decrees or orders made in such Court are ordinarily appealable.

(2) The provisions of Chapter XXXI. shall, so far as they are applicable, apply to appeals under this section, and the Appellate Court may alter or reverse the finding, or reduce or reverse the sentence appealed against.

(3) An appeal from such conviction by a Court of Small Causes in a Presidency-town shall lie to the High Court, and

an appeal from such conviction by any other Court of Small Causes shall lie to the Court of Session for the sessions division within which such Court is situate.

(4) An appeal from such conviction by any officer as Registrar or Sub-Registrar appointed as aforesaid may, when such officer is also Judge of a Civil Court, be made to the Court to which it would, under the preceding portion of this section, be made if such conviction were a decree by such officer in his capacity as such Judge: and, in other cases, may be made to the District Judge, or, in the presidency-towns, to the High Court.

487 (1) Except as provided in sections 477, 480, and 485, no Judge of a Criminal Court or Magistrate, other than a Judge of a High Court,* shall try any person for any offence referred to in section 195, when such offence is committed before himself, or in contempt of his authority, or is brought under his notice as such Judge or Magistrate in the course of a judicial proceeding.

(2) Nothing in section 475 or section 482 shall prevent a Magistrate empowered to commit to the Court of Session or High Court from himself committing any case to such Court.

* The words, "and the Recorder of Rangoon," have here been omitted, being repealed by the Lower Burma Courts Act (VI. of 1900), Sch. II.

CHAPTER XXXVI.

OF THE MAINTENANCE OF WIVES AND CHILDREN.

488. (1) If, any person having sufficient means, neglects or refuses to maintain his wife or his legitimate or illegitimate child unable to maintain itself, the District Magistrate, a Presidency Magistrate, a Sub-divisional Magistrate, or a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, at such monthly rate, not exceeding fifty rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate from time to time directs.

(2) Such allowance shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance.

(3) If any person so ordered wilfully neglects to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant* for levying the amount due in manner hereinbefore provided for levying fines,† and may sentence‡ such person, for the whole or any part of each month's allowance remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that, if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her and may make an order under this section notwithstanding such offer if he is satisfied that there is just ground for so doing.

(4) No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

* See Sch. V., Form XLI., *infra*.

† See ss. 386 to 389, *supra*.

‡ See Sch. V, Form XL., *infra*.

(6) All evidence under this chapter shall be taken in the presence of the husband or father, as the case may be, or, when his personal attendance is dispensed with, in the presence of his pleader, and shall be recorded in the manner prescribed in the case of summons-cases :

Provided that, if the Magistrate is satisfied that he is wilfully avoiding service, or wilfully neglects to attend the Court, the Magistrate may proceed to hear and determine the case *ex parte*. Any order so made may be set aside for good cause shown, on application made within three months from the date thereof.

(7) The accused may tender himself as a witness, and in such case shall be examined as such.

(8) The Court, in dealing with applications under this section, shall have power to make such order as to costs as may be just.

(9) The accused may be proceeded against in any district where he resides or is, or where he last resided with his wife, or, as the case may be, the mother of the illegitimate child.

489. On proof of a change in the circumstances of any person receiving under section 488 a monthly allowance, or ordered under the same section to pay a monthly allowance to his wife or child, the Magistrate may make such alteration in the allowance as he thinks fit. Provided that, if he increases the allowance, the monthly rate of fifty rupees in the whole be not exceeded.

490. A copy of the order of maintenance shall be given with-
 Enforcement of order of maintenance. out payment to the person in whose favour it is made, or to his guardian, if any, or to the person to whom the allowance is to be paid ; and such order may be enforced by any Magistrate in any place where the person against whom it is made may be, on such Magistrate being satisfied as to the identity of the parties, and the non-payment of the allowance due.

CHAPTER XXXVII.

DIRECTIONS OF THE NATURE OF A HABEAS CORPUS.

491. (1) Any of the High Courts of Judicature at Fort William, Madras, and Bombay may, ^{Power to issue directions of} the nature of a *habeas corpus*. whenever it thinks fit, direct—

- (a) that a person within the limits[†] of its ordinary original civil jurisdiction be brought up before the Court to be dealt with according to law ;
 - (b) that a person illegally or improperly detained in public or private custody within such limits be set at liberty ;
 - (c) that a prisoner detained in any jail situate within such limits be brought before the Court to be there examined as a witness in any matter pending or to be inquired into in such Court ;
 - (d) that a prisoner detained as aforesaid be brought before a Court-martial or any Commissioners acting under the authority of any Commission from the Governor-General in Council for trial, or to be examined touching any matter pending before such Court-martial or Commissioners respectively ;
 - (e) that a prisoner within such limits be removed from one custody to another for the purpose of trial ; and
 - (f) that the body of a defendant within such limits be brought in on the Sheriff's return of *cepi corpus* to a writ of attachment.
- (2) Each of the said High Courts may, from time to time, frame rules to regulate the procedure in cases under this section.
- (3) Nothing in this section applies to persons detained under the Bengal State Prisoners Regulation, 1818,* Madras Regulation II. of 1819, or Bombay Regulation XXV. of 1827, or the State Prisoners Act, 1850,† or the State Prisoners Act, 1858.‡

* Ben. Reg. III. of 1818.

† Act XXXIV. of 1850.

‡ Act III. of 1858.

PART IX.—SUPPLEMENTARY PROVISIONS.

CHAPTER XXXVIII.

OF THE PUBLIC PROSECUTOR.

492. (1) The Governor-General in Council or the Local Government may appoint, generally, or in any case, or for any specified class of cases, in any local area, one or more officers to be called Public Prosecutors.

(2) In any case committed for trial to the Court of Session, the District Magistrate, or, subject to the control of the District Magistrate, the Sub-divisional Magistrate may, in the absence of the Public Prosecutor, or where no Public Prosecutor has been appointed, appoint any other person, not being an officer of Police below the rank of Assistant District Superintendent, to be Public Prosecutor for the purpose of such case.

493. The Public Prosecutor may appear and plead without any written authority before any Court in which any case of which he has charge is under inquiry, trial, or appeal; and, if any private person instructs a pleader to prosecute in any Court any person in any such case, the Public Prosecutor shall conduct the prosecution, and the pleader so instructed shall act therein under his directions.

494 Any Public Prosecutor appointed by the Governor-General in Council or the Local Government may, with the consent of the Court, in cases tried by jury before the return of the verdict, and in other cases before the judgment is pronounced, withdraw from the prosecution of any person; and upon such withdrawal,—

(a) if it is made before a charge has been framed, the accused shall be discharged;

(b) if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted.

495. (1) Any Magistrate inquiring into or trying any case may permit the prosecution to be conducted by any person other than an official.

cer of police* below a rank to be prescribed by the Local Government in this behalf with the previous sanction of the Governor-General in Council, but no person, other than the Advocate-General, Standing Counsel, Government Solicitor, Public Prosecutor, or other officer generally or specially empowered by the Local Government in this behalf, shall be entitled to do so without such permission.

(2) Any such officer shall have the like power of withdrawing from the prosecution as is provided by section 494, and the provisions of that section shall apply to any withdrawal by such officer.

(3) Any person conducting the prosecution may do so personally, or by a pleader.

(4) An officer of police shall not be permitted to conduct the prosecution if he has taken any part in the investigation into the offence with respect to which the accused is being prosecuted.

CHAPTER XXXIX.

OF BAIL.

496. When any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a police-station, or appears or is brought before a Court, and is prepared, at any time while in the custody of such officer or at any stage of the proceedings before such Court, to give bail, such person shall be released on bail :†

Provided that such officer or Court, if he or it thinks fit, may, instead of taking bail from such person, discharge him on his executing a bond† without sureties for his appearance as hereinafter provided.

497. (1) When any person accused of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police-station, or appears or is brought before a Court, he may be released on bail, but he shall not be so released if there appear

* As to conduct of prosecutions by police-officers in Upper Burma notwithstanding anything in s. 495, see the Upper Burma Criminal Justice Regulation (V. of 1892). Sch., s. XIV.

† See Sch. V., Form XLII., *infra*.

reasonable grounds for believing that he has been guilty of the offence of which he is accused.

(2) If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, that there are not reasonable grounds for believing that the accused has committed such offence, but that there are sufficient grounds for further inquiry into his guilt, the accused shall, pending such inquiry, be released on bail, or, at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.

(3) Any Court may, at any subsequent stage of any proceeding under this Code, cause any person who has been released under this section to be arrested, and may commit him to custody.

498. The amount of every bond executed under this chapter

shall be fixed with due regard to the circumstances of the case, and shall not be excessive; and the High Court or Court of Session may, in any case, whether there be an appeal on conviction or not, direct that any person be admitted to bail, or that the bail required by a police-officer or Magistrate be reduced.

499. (1) Before any person is released on bail or released

on his own bond, a bond,* for such sum of money as the police-officer or Court, as the case may be, thinks sufficient, shall be executed by such person, and, when he is released on bail, by one or more sufficient sureties conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the police-officer or Court, as the case may be.

(2) If the case so require, the bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session, or other Court to answer the charge.

500. (1) As soon as the bond has been executed, the person

for whose appearance it has been executed shall be released; and, when he is in jail, the Court admitting him to bail shall issue an order of release,* to the officer in charge of the jail, and such officer, on receipt of the order, shall release him.

* See Sch. V., Form XLIII., *infra*.

(2) Nothing in this section, section 496, or section 497 shall be deemed to require the release of any person liable to be detained for some matter other than that in respect of which the bond was executed.

501. If, through mistake, fraud, or otherwise, insufficient sureties have been accepted, or if they afterwards become insufficient, the Court may issue a warrant of arrest directing that the person released on bail be brought before it, and may order him to find sufficient sureties, and, on his failing so to do, may commit him to jail.

502. (1) All or any sureties for the attendance and appearance of a person released on bail may at any time apply to a Magistrate to discharge the bond, either wholly or so far as relates to the applicants.

(2) On such application being made, the Magistrate shall issue his warrant of arrest directing that the person so released be brought before him.

(3) On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the Magistrate shall direct the bond to be discharged either wholly or so far as relates to the applicants, and shall call upon such person to find other sufficient sureties; and, if he fails to do so, may commit him to custody.

CHAPTER XL.

OF COMMISSIONS FOR THE EXAMINATION OF WITNESSES.

503. (1) Whenever, in the course of an inquiry, a trial, or any other proceeding under this Code, it appears to a Presidency Magistrate, a District Magistrate, a Court of Session, or the High Court that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense, or inconvenience, which, under the circumstances of the case, would be unreasonable, such Magistrate or Court may dispense with such attendance, and may issue a commission to any District Magistrate or Magistrate of the first class, within the local limits of whose jurisdiction such witness resides, to take the evidence of such witness.

(2) When the witness resides in the territories of any Prince or Chief in India in which there is an officer representing the British Indian Government, the commission may be issued to such officer.

(3) The Magistrate or officer to whom the commission is issued, or if he is the District Magistrate, he or such Magistrate of the first class as he appoints in this behalf shall proceed to the place where the witness is, or shall summon the witness before him, and shall take down his evidence in the same manner, and may, for this purpose, exercise the same powers, as in trials of warrant-cases under this Code.

(4) Where the commission is issued to such officer as is mentioned in sub-section (2), he may delegate his powers and duties under the commission to any officer subordinate to him whose powers are not less than those of a Magistrate of the first class in British India.

504. (1) If the witness is within the local limits of the jurisdiction of any Presidency Magistrate, the Magistrate or Court issuing the commission may direct the same to the said Presidency Magistrate, who thereupon may compel the attendance of, and examine, such witness as if he were a witness in a case pending before himself.

(2) Nothing in this section shall be deemed to affect the power of the High Court to issue commissions under the Slave Trade Act, 1876,* section 3.

505. (1) The parties to any proceeding under this Code in which a commission is issued may respectively forward any interrogatories in writing which the Magistrate or Court directing the commission may think relevant to the issue, and the Magistrate or officer to whom the commission is directed shall examine the witness upon such interrogatories.

(2) Any such party may appear before such Magistrate or officer by pleader, or, if not in custody, in person, and may examine, cross-examine, and re-examine (as the case may be) the said witness.

* Stat. 39 & 40 Vict., c. 46.

506. Whenever, in the course of an inquiry or a trial or any other proceeding under this Code before any Magistrate other than a Presidency Magistrate or District Magistrate, it appears that a commission ought to be issued for the examination of a witness, whose evidence is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense, or inconvenience, which, under the circumstances of the case, would be unreasonable, such Magistrate shall apply to the District Magistrate, stating the reasons for the application; and the District Magistrate may either issue a commission in the manner hereinbefore provided, or reject the application.

507. (1) After any commission issued under section 503 or section 506 has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder, to the Court out of which it issued; and the commission, the return thereto, and the deposition shall be open at all reasonable times to inspection of the parties, and may, subject to all just exceptions, be read in evidence in the case by either party, and shall form part of the record.

(2) Any deposition so taken, if it satisfies the conditions prescribed by section 33 of the Indian Evidence Act, 1872,* may also be received in evidence at any subsequent stage of the case before another Court.

508. In every case in which a commission is issued under section 503 or section 506, the inquiry, trial, or other proceeding may be adjourned for a specified time reasonably sufficient for the execution and return of the commission.

CHAPTER XLI.

SPECIAL RULES OF EVIDENCE.

509. (1) The deposition of a Civil Surgeon or other medical witness, taken and attested by a Magistrate in the presence of the accused

* Act I. of 1872.

or taken on commission under Chapter XL., may be given in evidence in any inquiry, trial, or other proceeding under this Code, although the deponent is not called as a witness.

(2) The Court may, if it thinks fit, summon and examine such deponent as to the subject-matter of his deposition.
Power to summon medical witness.

510. Any document purporting to be a report under the hand of any Chemical Examiner or Assistant Chemical Examiner to Government, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial, or other proceeding under this Code.
Report of Chemical Examiner.

511. In any inquiry, trial, or other proceeding under this Code, a previous conviction or acquittal may be proved, in addition to any other mode provided by any law for the time being in force,—
Previous conviction or acquittal how proved.

(a) by an extract certified, under the hand of the officer having the custody of the records of the Court in which such conviction or acquittal was had, to be a copy of the sentence or order; or,

(b) in case of a conviction either by a certificate signed by the officer in charge of the jail in which the punishment or any part thereof was inflicted, or by production of the warrant of commitment under which the punishment was suffered;

together with, in each of such cases, evidence as to the identity of the accused person with the person so convicted or acquitted.

512. (1) If it is proved that an accused person has absconded, and that there is no immediate prospect of arresting him, the Court competent to try or commit for trial such person for the offence complained of may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their depositions. Any such deposition may, on the arrest of such person, be given in evidence against him on the inquiry into, or trial for, the offence with which he is charged if the deponent is dead or incapable of giving evidence, or his attendance cannot be procured without an amount of delay, expense, or inconvenience, which, under the circumstances of the case, would be unreasonable.
Record of evidence in absence of accused.

(2) If it appears that an offence punishable with death or transportation has been committed by some person or persons unknown, the High Court may direct that any Magistrate of the first class shall hold an inquiry, and examine any witnesses who can give evidence concerning the offence. Any depositions so taken may be given in evidence against any person who is subsequently accused of the offence if the deponent is dead or incapable of giving evidence, or beyond the limits of British India.

CHAPTER XLII.

PROVISIONS AS TO BONDS.

513. When any person is required by any Court or officer to execute a bond, with or without sureties, such Court or officer may, except in the case of a bond for good behaviour, permit him to deposit a sum of money or Government promissory notes, to such amount as the Court or officer may fix, in lieu of executing such bond.

514.* (1) Whenever it is proved to the satisfaction of the Court by which a bond under this Code has been taken, or of the Court of a Presidency Magistrate or Magistrate of the first class,

or, when the bond is for appearance before a Court, to the satisfaction of such Court,

that such bond has been forfeited, the Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof, or to show cause why it should not be paid.†

(2) If sufficient cause is not shown, and the penalty is not paid, the Court may proceed to recover the same by issuing a warrant† for the attachment and sale of the moveable property belonging to such person, or his estate if he be dead.

(3) Such warrant may be executed within the local limits of the jurisdiction of the Court which issued it; and it shall authorize the distress and sale of any moveable property belonging to such person without such limits when endorsed by the District Magis-

* See notes to ss 110 to 112, *supra*.

† See Sch. V., Forms XLIV. to LIII., *infra*.

trate or Chief Presidency Magistrate, within the local limits of whose jurisdiction such property is found.

(4) If such penalty is not paid, and cannot be recovered by such attachment and sale, the person so bound shall be liable, by order of the Court which issued the warrant, to imprisonment in the civil jail for a term which may extend to six months.

(5) The Court may, at its discretion, remit any portion of the penalty mentioned, and enforce payment in part only.

(6) Where a surety to a bond dies before the bond is forfeited, his estate shall be discharged from all liability in respect of the bond, but the party who gave the bond may be required to find a new surety.

515. All orders passed under section 514 by any Magistrate other than a Presidency Magistrate or District Magistrate shall be appealable to the District Magistrate, or, if not so appealed, may be revised by him.

516. The High Court or Court of Session may direct any Magistrate to levy the amount due on a bond to appear and attend at such High Court or Court of Session.

CHAPTER XLIII.

OF THE DISPOSAL OF PROPERTY

517. (1) When an inquiry or a trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal of any property or document produced before it, or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

(2) When a High Court or a Court of Session makes such order, and cannot, through its own officers, conveniently deliver the property to the person entitled thereto, such Court may direct that the order be carried into effect by the District Magistrate.

(3) When an order is made under this section in a case in which an appeal lies, such order shall not (except when the property is live-stock, or is subject to speedy and natural decay) be

carried out until the period allowed for presenting such appeal has passed, or, when such appeal is presented within such period, until such appeal has been disposed of.

*Explanation.**—In this section the term “property” includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.

518. In lieu of itself passing an order under section 517, the Court may direct the property to be delivered to the District Magistrate, or to a Sub-divisional Magistrate, who shall in such cases deal with it as if it had been seized by the police, and the seizure had been reported to him in the manner hereinafter mentioned.

519† When any person is convicted of any offence which includes, or amounts to, theft or receiving stolen property, and it is proved that any other person has brought the stolen property from him without knowing, or having reason to believe, that the same was stolen, and that any money has on his arrest been taken out of the possession of the convicted person, the Court may, on the application of such purchaser, and on the restitution of the stolen property to the person entitled to the possession thereof, order that, out of such money, a sum not exceeding the price paid by such purchaser be delivered to him.

520. Any Court of appeal, confirmation, reference, or revision may direct any order under section 517, section 518, or section 519, passed by a Court subordinate thereto, to be stayed pending consideration by the former Court, and may modify, alter, or annul such order, and make any further orders that may be just.

521. (1) On a conviction under the Indian Penal Code, ‡ section 292, section 293, section 501, or section 502 the Court may order the Destruction of libellous and other matter.

* Compare the Larceny Act (Stat. 24 & 25 Vict., c. 96), s. 1.

† Compare the Criminal Law Amendment Act, 1867. (Stat. 30 & 31 Vict., c. 35), s. 9

‡ Act. XLV. of 1860.

destruction of all the copies of the thing in respect of which the conviction was had, and which are in the custody of the Court, or remain in the possession or power of the person convicted.

(2) The Court may, in like manner, on a conviction under the Indian Penal Code,* section 272, section 273, section 274, or section 275, order the food, drink, drug, or medical preparation, in respect of which the conviction was had, to be destroyed.

522. (1) Whenever a person is convicted of an offence attended by criminal force, and it appears to the Court that by such force any person has been dispossessed of any immoveable property, the Court may, if it thinks fit, order such person to be restored to the possession of the same.

(2) No such order shall prejudice any right or interest to or in such immoveable property which any person may be able to establish in a civil suit.

523. (1) The seizure by any police-officer of property taken under section 51, or alleged or suspected to have been stolen, or found under circumstances which create suspicion of the commission of any offence, shall be forthwith reported to a Magistrate, who shall make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or, if such person cannot be ascertained, respecting the custody and production of such property.

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit. If such person is unknown, the Magistrate may detain it, and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person, who may have a claim thereto, to appear before him, and establish his claim, within six months from the date of such proclamation.

524. (1) If no person within such period establishes his claim to such property, and if the person in whose possession such property was found is unable to show that it was legally

acquired by him, such property shall be at the disposal of the Government, and may be sold under the orders of the Presidency Magistrate, District Magistrate, or Sub-divisional Magistrate, or of a Magistrate of the first class empowered by the Local Government in this behalf.

(2) In the case of every order passed under this section, an appeal shall lie to the Court to which appeals against sentences of the Court passing such order would lie.

525. If the person entitled to the possession of such property is unknown or absent, and the property is subject to speedy and natural decay, or the Magistrate to whom its seizure is reported is of opinion that its sale would be for the benefit of the owner, the Magistrate may at any time direct it to be sold, and the provisions of sections 523 and 524 shall, as nearly as may be practicable, apply to the net proceeds of such sale.

CHAPTER XLIV.

OF THE TRANSFER OF CRIMINAL CASES.

High Court may transfer case or itself try it.

526. (1) Whenever it is made to appear to the High Court—

- (a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or
- (b) that some question of law of unusual difficulty is likely to arise, or
- (c) that a view of the place in or near which any offence has been committed may be required for the satisfactory inquiry into or trial of the same, or
- (d) that an order under this section will tend to the general convenience of the parties or witnesses, or
- (e) that such an order is expedient for the ends of justice or is required by any provision of this Code,

it may order—

- (i) that any offence be inquired into or tried by any Court not empowered under sections 177 to 184 (both inclusive), but, in other respects, competent to inquire into or try such offence ;

- (ii) that any particular criminal case or appeal, or class of such cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction ;
- (iii) that any particular criminal case or appeal be transferred to, and tried before, itself ; or
- (iv) that an accused person be committed for trial to itself, or to a Court of Session.

(2) When the High Court withdraws for trial before itself any case from any Court other than the Court of a Presidency Magistrate, it shall, except as provided in section 267, observe in such trial the same procedure which that Court would have observed if the case had not been so withdrawn.

(3) The High Court may act either on the report of the lower Court, or on the application of a party interested, or on its own initiative.

(4) Every application for the exercise of the power conferred by this section shall be made by motion, which shall, except when the applicant is the Advocate-General, be supported by affidavit or affirmation.

(5) When an accused person makes an application under this section, the High Court may direct him to execute a bond, with or without sureties, conditioned that he will, if convicted, pay the costs of the prosecutor.

(6) Every accused person making any such application shall give to the Public Prosecutor notice in writing of the application, together with a copy of the grounds on which it is made ; and no order shall be made on the merits of the application unless at least twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

(7) Nothing in this section shall be deemed to affect any order made under section 197.

(8) If, in any criminal case or appeal, before the commencement of the hearing, the Public Prosecutor, the complainant, or the accused notifies, to the Court before which the case or appeal is pending, his intention to make an application under this section in respect of the case, the Court shall exercise powers of postponement or adjournment on application under this section.

adjournment given by section 344 in such a manner as will afford a reasonable time for the application being made, and an order being obtained thereon, before the accused is called on for his defence, or, in the case of an appeal, before the hearing of the appeal.

527. (1) The Governor-General in Council may, by notification in the *Gazette of India*, direct the transfer of any particular criminal case or appeal from one High Court* to another High Court, or from any Criminal Court subordinate to one High Court to any other Criminal Court of equal or superior jurisdiction subordinate to another High Court whenever it appears to him that such transfer will promote the ends of justice, or tend to the general convenience of parties or witnesses.

(2) The Court to which such case or appeal is transferred shall deal with the same as if it had been originally instituted in, or presented to such Court.

528. (1) Any Chief Presidency Magistrate, District Magistrate, Chief Presidency, District, or Sub-divisional Magistrate may withdraw or refer cases. or Sub-divisional Magistrate may withdraw or refer cases. which he had made over to, any Magistrate subordinate to him, and may inquire into or try such case himself, or refer it for inquiry or trial to any other such Magistrate competent to inquire into or try the same.

(2) The Local Government may authorize the District Magistrate to withdraw from any* Magistrate subordinate to him, either such classes of cases as he thinks proper, or particular classes of cases.

(3) A Magistrate making an order under this section shall record in writing his reasons for making the same.

(4) The head of a village under Madras Regulation IV. of 1821 is a Magistrate for the purposes of this section.

* For the purposes of this section, the Court of the Recorder of Rangoon is to be deemed to be a High Court.—See the Lower Burma Courts Act (XI. of 1889), s. 48.

CHAPTER XLV.

OF IRREGULAR PROCEEDINGS.

Irregularities which do not vitiate proceedings.

529. If any Magistrate not empowered by law to do any of the following things, namely—

- (a) to issue a search-warrant under section 98 ;
- (b) to order, under section 155, the police to investigate an offence ;
- (c) to hold an inquest under section 176 ;
- (d) to issue process, under section 186, for the apprehension of a person within the local limits of his jurisdiction who has committed an offence outside such limits ;
- (e) to take cognizance of an offence under section 190, subsection (1), clause (a) or clause (b) ;
- (f) to transfer a case under section 192 ;
- (g) to tender a pardon under section 337 or section 338 ;
- (h) to sell property under section 524 or section 525 ; or
- (i) to withdraw a case and try it himself under section 528, erroneously in good faith* does that thing, his proceedings shall not be set aside merely on the ground of his not being so empowered.

530. If any Magistrate, not being empowered by law in this behalf, does any of the following things, namely—

Irregularities which vitiate proceedings.

- (a) attaches and sells property under section 88 ;
- (b) issues a search-warrant for a letter, parcel, or other thing in the post-office or a telegram in the Telegraph Department ;
- (c) demands security to keep the peace ;
- (d) demands security for good behaviour ;
- (e) discharges a person lawfully bound to be of good behaviour ;
- (f) cancels a bond to keep the peace ;

* For definition of "good faith," see the Indian Penal Code (Act XLV. of 1860), ss. 52 and 76, and the General Clauses Act (X. of 1897) s. 3 (20).

- (g) makes an order under section 133 as to a local nuisance ;
- (h) prohibits, under section 143, the repetition or continuance of a public nuisance ;
- (i) issues an order under section 144 ;
- (j) makes an order under Chapter XII. ;
- (k) takes cognizance, under section 190, sub-section (1), clause (c), of an offence ;
- (l) passes a sentence, under section 349, on proceedings recorded by another Magistrate ;
- (m) calls, under section 435, for proceedings ;
- (n) makes an order for maintenance ;
- (o) revises, under section 515, an order passed under section 514 ;
- (p) tries an offender ;
- (q) tries an offender summarily ; or
- (r) decides an appeal,

his proceedings shall be void.

531. No finding, sentence, or order of any Criminal Court shall be set aside merely on the ground
Proceedings in wrong place. that the inquiry, trial, or other proceeding in the course of which it was arrived at or passed took place in a wrong sessions division, district, sub-division, or other local area unless it appears that such error has in fact occasioned a failure of justice.

532. (1) If any Magistrate or other authority purporting to exercise powers duly conferred, which
When irregular commitments may be validated. were not so conferred, commits an accused person for trial before a Court of Session or High Court, the Court to which the commitment is made may, after perusal of the proceedings, accept the commitment if it considers that the accused has not been injured thereby unless, during the inquiry and before the order of commitment, objection was made on behalf, either of the accused, or of the prosecution, to the jurisdiction of such Magistrate or other authority.

(2) If such Court considers that the accused was injured, or if such objection was so made, it shall quash the commitment, and direct a fresh inquiry by a competent Magistrate.

533. (1) If any Court, before which a confession or other statement of an accused person recorded or purporting to be recorded under section 164 or section 364 is tendered or has been received in evidence, finds that any of the provisions of either of such sections have not been complied with by the Magistrate recording the statement, it shall take evidence that such person duly made the statement recorded; and, notwithstanding anything contained in the Indian Evidence Act, 1872,* section 91, such statement shall be admitted if the error has not injured the accused as to his defence on the merits.

(2) The provisions of this section apply to Courts of appeal, reference, and revision.

534. An omission to ask any person whether he is an European British subject, in a case to which sub-section (2) of section 454 applies, shall not affect the validity of any proceeding.

535. (1) No finding or sentence pronounced or passed shall be deemed invalid merely on the ground that no charge was framed unless, in the opinion of the Court of appeal or revision, a failure of justice has in fact been occasioned thereby.

(2) If the Court of appeal or revision thinks that a failure of justice has been occasioned by an omission to frame a charge, it shall order that a charge be framed, and that the trial be re-commenced from the point immediately after the framing of the charge.

536. (1) If an offence triable with the aid of assessors is tried by a jury, the trial shall not, on that ground only, be invalid.

(2) If an offence triable by a jury is tried with the aid of assessors, the trial shall not, on that ground only, be invalid unless the objection is taken before the Court records its finding.

* Act I. of 1872.

537.*† Subject to the provisions hereinbefore contained, no finding, sentence, or order passed by a Court of competent jurisdiction shall be reversed or altered under Chapter XXVII., or on appeal or revision, on account—

Finding or sentence when reversible by reason of error or omission in charge or other proceedings.

- (a) of any error, omission, or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment, or other proceedings before or during trial, or in any inquiry or other proceedings under this Code, or
- (b) of the want of, or any irregularity in, any sanction required by section 195 or any irregularity in proceedings taken under section 476, or
- (c) of the omission to revise any list of jurors or assessors in accordance with section 324, or
- (d) of any misdirection in any charge to a jury unless such error, omission, irregularity, want, or misdirection has in fact occasioned a failure of justice.

Explanation.—In determining whether any error, omission, or irregularity in any proceeding under this Code has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings.

Illustration.

A Magistrate being required by law to sign a document signs it by initials only : This is purely an irregularity, and does not affect the validity of the proceeding.

* Compare the Summary Jurisdiction Act, 1847-1848 (Stat. 11 & 12 Vict., c 43), s. 9.

† In Upper Burma, orders are not reversible on appeal or revision on technical grounds alone.—See the Upper Burma Criminal Justice Regulation (V. of 1892), Sch., s. XV. As to European British subjects, however, see s. XVII., *ibid.*

In the Sonthal Parganas, orders are not reversible on appeal or revision on account of irregularity of procedure unless it is likely to occasion a failure of justice.—See the Sonthal Parganas Regulation (V. of 1893), s. 4, as modified up to the 1st October 1899.

538. No distress made under this Code shall be deemed unlawful, nor shall any person making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, writ of distress, or other proceedings relating thereto.

Distress not illegal nor distrainer a trespasser for defect or want of form in proceedings.

CHAPTER XLVI.

MISCELLANEOUS.

539. Affidavits and affirmations to be used before any High Court or any officer of such Court may be sworn and affirmed before such Court or the Clerk of the Crown, or any Commissioner or other person appointed by such Court for that purpose, or any Judge, or any Commissioner for taking affidavits in any Court of Record in British India, or any Commissioner to administer oaths in England or Ireland, or any Magistrate authorized to take affidavits or affirmations in Scotland.

Courts and persons before whom affidavits may be sworn.

540. Any Court may, at any stage of any inquiry, trial, or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it essential to the just decision of the case.

Power to summon material witness, or examine person present.

541. (1). Unless when otherwise provided by any law for the time being in force, the Local Government may direct in what place any person liable to be imprisoned or committed to custody under this Code shall be confined.

Power to appoint place of imprisonment.

(2) If any person liable to be imprisoned or committed to custody under this Code is in confinement in a civil jail, the Court or Magistrate ordering the imprisonment or committal may direct that the person be removed to a criminal jail.

Removal to criminal jail of accused or convicted persons who are in confinement in civil jail, and their return to the civil jail.

(3) When a person is removed to a criminal jail under subsection (1), he shall, on being released therefrom, be sent back to the civil jail, unless either—

(a) three years have elapsed since he was removed to the criminal jail, in which case he shall be deemed to have been discharged from the civil jail under section 342* of the Code of Civil Procedure; or

(b) the Court which ordered his imprisonment in the civil jail has certified to the officer in charge of the criminal jail that he is entitled to be discharged under section 341* of the Code of Civil Procedure.

542. (1) Notwithstanding anything contained in the Prisoners' Testimony Act, 1869,† any Presidency Magistrate desirous of examining, as a witness or an accused person in any case pending before him, any person confined in any jail within the local limits of his jurisdiction, may issue an order to the officer in charge of the said jail requiring him to bring such prisoner in proper custody at a time to be therein named to the Magistrate for examination.

(2) The officer so in charge, on receipt of such order, shall act in accordance therewith, and shall provide for the safe custody of the prisoner during his absence from the jail for the purpose aforesaid.

543. When the services of an interpreter are required by any Criminal Court for the interpretation of any evidence or statement, he shall be bound to state the true interpretation of such evidence or statement.

544. Subject to any rules made by the Local Government with the previous sanction of the Governor-General in Council, any Criminal Court may, if it thinks fit, order payment, on the part of Government, of the reasonable expenses of any complainant or witness.

* These references to ss. 342 and 341 of Act XIV. of 1882 should now be meant to apply to s. 58 of Act V of 1908 (the present Code in force).—See s. 158 of the latter Act

† Act XV. of 1869.

attending for the purposes of any inquiry, trial, or other proceeding before such Court under this Code.*

545.† (1) Whenever, under any law in force for the time being, a Criminal Court imposes a fine, or confirms, in appeal, revision or otherwise, a sentence of fine, or a sentence of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied—

(a) in detraying expenses properly incurred in the prosecution;

(b) in compensation for the injury caused by the offence committed, where substantial compensation is, in the opinion of the Court, recoverable by civil suit.

(2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.

546. At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under section 545.

547. Any money (other than a fine) payable by virtue of any order made under this Code shall be recoverable as if it were a fine.

* For rules made in exercise of these powers for—

(1) Assam, *see* the Assam Manual or Local Rules and Orders, Ed. 1893, p. 188;

(2) Bombay, *see* the Bombay List of Local Rules and Orders, Ed. 1897, Vol. I., pp. 393 and 394;

(3) Burma, *see* the Burma Rules Manual, Ed. 1897, p. 107;

(4) Central Provinces, *see* the Central Provinces List of Local Rules and Orders Ed. 1896 p. 43;

(5) Madras, *see* the Madras List of Local Rules and Orders, Ed. 1898, Vol. I., p. 100;

(6) North-Western Provinces and Oudh, *see* the North Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, p. 108

† In Upper Burma the Court imposing a fine or confirming a sentence of an officer under s 94 of the Upper Burma Ruby Regulation (XII. of 1887) may presume for the purposes of s 545, that injury has been caused by the offence, and that substantial compensation is recoverable by civil suit in respect to the injury.—*See* s 9 (5) of that Regulation.

548. If any person affected by a judgment or order passed by a Criminal Court desires to have a copy of the Judge's charge to the jury, or of any order or deposition or other part of the record, he shall, on applying for such copy, be furnished therewith :

Provided that he pays for the same, unless the Court, for some special reason, thinks fit to furnish it free of cost.

549.* (1) The Governor-General in Council may make rules consistent with this Code and the Army Act† or any similar law for the time being in force, as to the cases in which persons subject to military law shall be tried by a Court to which this Code applies, or by Court-martial, and when any person is brought before a Magistrate, and charged with an offence for which he is liable, under the Army Act,† section 41, to be tried by a Court-martial, such Magistrate shall have regard to such rules, and shall in proper cases deliver him, together with a statement of the offence of which he is accused, to the commanding officer of the regiment, corps, or detachment to which he belongs, or to the commanding officer of the nearest military station, for the purpose of being tried by Court-martial.

(2) Every Magistrate shall, on receiving a written application for that purpose by the commanding officer of any body of troops stationed or employed at any such place, use his utmost endeavours to apprehend and secure any person accused of such offence.

550. Any police-officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence. Such police-officer, if subordinate to the officer in charge of a police-station, shall forthwith report the seizure to that officer.

* For rules made under this section for delivery to the military authorities of persons charged with offences under s. 41 of the Army Act (Stat. 44 & 45 Vict., c. 58) for which they are liable to be tried by Court-martial under that Act, see *Gazette of India*, 1887, Pt. I., p. 387. These rules were originally made under s. 549 of Act X. of 1882, and are kept in force by s. 2 (2) of this Act.

† Stat. 44 & 45 Vict., c. 58.

551. Police-officers superior in rank to an officer in charge of a police-station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station.

552. Upon complaint made to a Presidency Magistrate or District Magistrate on oath of the abduction or unlawful detention of a woman, or of a female child under the age of fourteen years, for any unlawful purpose, he may make an order for the immediate restoration of such woman to her liberty, or of such female child to her husband, parent, guardian, or other person having the lawful charge of such child, and may compel compliance with such order, using such force as may be necessary.

553. (1) Whenever any person causes a police-officer to arrest another person in a presidency-town, if it appears to the Magistrate by whom the case is heard that there was no sufficient ground for causing such arrest, the Magistrate may award such compensation, not exceeding fifty rupees, to be paid by the person so causing the arrest to the person so arrested, for his loss of time and expenses in the matter, as the Magistrate thinks fit.

(2) In such cases, if more persons than one are arrested, the Magistrate may, in like manner, award to each of them such compensation, not exceeding fifty rupees, as such Magistrate thinks fit.

(3) All compensation awarded under this section may be recovered as if it were a fine, and, if it cannot be so recovered, the person by whom it is payable shall be sentenced to simple imprisonment for such term not exceeding thirty days as the Magistrate directs, unless such sum is sooner paid.

554. (1) With the previous sanction of the Governor-General in Council, the High Court at Fort William, and, with the previous sanction of the Local Government, any other High Court established by Royal Charter, may, from time to time, make rules for the inspection of the records of subordinate Courts.

(2) Every High Court not established by Royal Charter may, from time to time, and with the previous sanction of the Local Government, make rules for other purposes.

- (a) make rules for keeping all books, entries, and accounts to be kept in all Criminal Courts subordinate to it, and for the preparation and transmission of any returns or statements to be prepared and submitted by such Court ;
- (b) frame forms for every proceeding in the said Courts for which it thinks that a form should be provided ;
- (c)* make rules for regulating its own practice and the practice and proceedings of all Criminal Courts subordinate to it ; and
- (d) make rules for regulating the execution of warrants issued under this Code for the levy of fines :

Provided that the rules and forms made and framed under this section shall not be inconsistent with this Code or any other law in force for the time being.

(3) All rules made under this section shall be published in the local official Gazette.

555. Subject to the power conferred by section 553,[†] and by section 15 of the Indian High Courts Act, 1861,[‡] the forms set forth in the fifth Schedule, with such variation as the circumstances of each case require, may be used for the retrospective purposes therein mentioned, and, if used, shall be sufficient.

556. No Judge or Magistrate shall, except with the permission of the Court to which an appeal lies from his Court, try or commit for trial any case to or in which he is a party, or personally interested, and no Judge or Magistrate shall hear an appeal from any judgment or order passed or made by himself.

Explanation.—A Judge or Magistrate shall not be deemed to be a party or personally interested, within the meaning of this section, to or in any case by reason only that he is a Municipal

* In Upper Burma and the Sonthal Parganas, rules under s. 554 (2) (c) may regulate (a) fees for processes, and (b) the fees to be paid for copies and inspection of records.—*See*, respectively, the Upper Burma Criminal Justice Regulation (V. of 1892), Sch., s. XVI., and the Sonthal Parganas Justice Regulation (V. of 1893), s. 4 (VII) as modified upto 1st October 1899.

[†] *Sic*, read " 554."

[‡] Stat. 24 & 25 Vict., c. 104.

Commissioner* or otherwise concerned therein in a public capacity, or by reason only that he has viewed the place in which an offence is alleged to have been committed, or any other place in which any other transaction material to the case is alleged to have occurred, and made an enquiry in connection with the case.

Illustration.

A, as Collector, upon consideration of information furnished to him, directs the prosecution of *B* for a breach of the Excise Laws : *A* is disqualified from trying this case as a Magistrate.

557. No pleader who practises in the Court of any Magistrate in a presidency-town or district shall sit as a Magistrate in such Court, or in any Court within the jurisdiction of such Court.

Practising pleader not to sit as Magistrate in certain Courts.

558. The Local Government may determine what, for the purposes of this Code, shall be deemed to be the language of each Court within the territories administered by such Government other than the High Court established by Royal Charter.

Power to decide language of Courts.

Powers of Governor-General in Council and Local Government exercisable from time to time.

559. All powers conferred by this Code on the Governor-General in Council, or on the Local Government, may be exercised from time to time as occasion requires.

560. A public servant having any duty to perform in connection with the sale of any property under this Code shall not purchase or bid for the property.

Officers concerned in sales not to purchase or bid for property.

Special provisions with respect to offence of rape by a husband.

561. (1) Notwithstanding anything in this Code, no Magistrate except a Chief Presidency Magistrate or District Magistrate shall—

(a) take cognizance of the offence of rape where the sexual intercourse was by a man with his wife, or

(b) commit the man for trial for the offence.

* Or a member of a District Board in the Punjab.—*See* s. 58 of the Punjab District Boards Act (XX. of 1883).

Or a member of a municipal Committee in the Punjab (*see* s. 188 of the Punjab Municipal Act. XX. of 1891); in Burma *see* the Burma Municipal Act (Burma Act III. of 1898); and, in the Central Provinces, *see* the Central Provinces Municipal Act (XVIII. of 1889), s. 144.

(2) And, notwithstanding anything in this Code, if a Chief Presidency Magistrate or District Magistrate deems it necessary to direct an investigation by a police-officer with respect to such an offence as is referred to in sub-section (1), no police-officer of a rank below that of police-inspector shall be employed either to make, or to take part in, the investigation.

First Offenders.

562. In any case in which a person is convicted of theft, theft in a building, dishonest misappropriation, cheating, or any other offence under the Indian Penal Code,* punishable with not more than two years' imprisonment before any Court, and no previous conviction is proved against him, if it appears to the Court before whom he is so convicted that, regard being had to the youth, character, and antecedents of the offender, to the trivial nature of the offence, and to any extenuating circumstances under which the offence was committed, it is expedient that the offender be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, and during such period (not exceeding one year as the Court may direct, to appear and receive sentence when called upon, and, in the meantime, to keep the peace, and be of good behaviour :

Provided that, where any first offender is convicted by a Magistrate of the third class, or a Magistrate of the second class not specially empowered by the Local Government in this behalf, and the Magistrate is of opinion that the powers conferred by this section should be exercised, he shall record his opinion to that effect, and submit the proceedings to a Magistrate of the first class or Sub-divisional Magistrate, forwarding the accused to, or taking bail or his appearance before, such Magistrate, who shall dispose of the case in manner provided by section 380.

563. (1) If the Court which convicted the offender, or a Court which could have dealt with the offender in respect of his original offence, is satisfied that the offender has failed to observe any of the conditions of his recognizance, it may issue a warrant for his apprehension.

Provision in case of offender failing to observe conditions of his recognizances.

(2) An offender, when apprehended on any such warrant, shall brought forthwith before the Court issuing the warrant, and such

* Act XLV. of 1860.

Court may either remand him in custody until the case is heard, or admit him to bail with a sufficient surety conditioned on his appearing for sentence. Such Court may, after hearing the case, pass sentence.

564. (1) The Court, before directing the release of an offender under section 562, shall be satisfied that the offender or his surety (if any) has a fixed place of abode or regular occupation in the place for which the Court acts, or in which the offender is likely to live during the period named for the observance of the conditions.

(2) Nothing in this section or in sections 562 and 563 shall affect the provisions of section 31 of the Reformatory Schools Act, 1897.*

Previously-convicted Offenders.

565. (1) When any person, having been convicted of any offence punishable under Chapter XII. or Chapter XVII. of the Indian Penal Code† with imprisonment for a term of three years or upwards, is again convicted of any offence punishable under either of those chapters with imprisonment for a term of three years or upwards by a High Court, Court of Session, Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, or any Magistrate of the first class specially empowered by the Local Government in this behalf, such Court or Magistrate may, if it or he thinks fit, at the time of passing sentence of transportation or imprisonment on such person, also order that his residence and any change of residence after release be notified, as hereinafter provided for a term not exceeding five years from the date of the expiration of such sentence.

(2) If such conviction is set aside on appeal or otherwise, such order shall become void.

(3) The Local Government, with the previous sanction of the Governor-General in Council, may make rules to carry out the provisions of this section relating to the notification of residence by released convicts.‡

(4) Any person refusing or neglecting to comply with any rule so made shall be punishable as if he had committed an offence under section 176 of the Indian Penal Code.†

* Act VIII. of 1897.

† Act XLV. of 1860.

‡ For instance of rules made under sub s. (3) of s. 565 in the Bombay Presidency, see *Bombay Government Gazette*, 1900, Pt. I., p. 374; in Burma, see the *Burma Gazette*, 1900, Pt. I., p. 237; in the Central Provinces see the *C. P. Gazette*, 1900, Pt. III., p. 53.

SCHEDULES :

I.—ENACTMENTS REPEALED.

II.—TABULAR STATEMENT OF OFFENCES.

III.—ORDINARY POWERS OF PROVINCIAL MAGISTRATES.

IV.—ADDITIONAL POWERS WITH WHICH PROVINCIAL MAGISTRATES
MAY BE INVESTED.

V.—FORMS.

SCHEDULE I.:

ENACTMENTS REPEALED.

(See section 2.)

Year.	No.	Short title or subject.	Extent of repeal.
1875 ...	X.	High Court's Criminal Procedure.	The whole.
1882 ...	X.	The Code of Criminal Procedure, 1882.	The whole.
1884 ...	III.	The Criminal Procedure Code Amendment Act, 1884	The whole.
1886 ...	X.	Amending the Code of Criminal Procedure, 1882, and certain other Acts.	Sections 1 to 19 (both inclusive).
1887 ...	V.	Amending the Code of Criminal Procedure, 1882.	The whole.
" ...	XIV.	The Indian Marine Act, 1887.	Section 78.
1889 ...	I.	The Metal Tokens Act, 1889.	Section 7.
" ...	V. "	Abolishing the Office of Coroner of Madras.	Section 4, sub section (1).*
" ...	XI.†	The Lower Burma Courts Act, 1889.	So much of the second Schedule as relates to the Code of Criminal Procedure, 1882.
" ...	XIII.	The Cantonments Act, 1889 ..	So much of the Schedule as relates to the Code of Criminal Procedure, 1882.
1891 ...	III.	Amending the Indian Evidence Act, 1872, and the Code of Criminal Procedure, 1882.	Section 9.

* See also the Repealing and Amending Act (XII of 1891).

† The whole Act has since been repealed by the Lower Burma Courts Act (VI. of 1900).

SCHEDULE I.—(*continued*).ENACTMENTS REPEALED.—(*continued*).

Year.	No.	Short title or subject.	Extent of repeal.
1891 ...	IV.	Amending the Code of Criminal Procedure, 1882.	The whole.
" ...	X.	Amending the Indian Penal Code and the Code of Criminal Procedure, 1882.	Sections 2 and 3.
" ...	XII.	The Repealing and Amending Act, 1891.	So much as relates to the Code of Criminal Procedure, 1882.
1894 ...	III.	Amending the Code of Criminal Procedure, 1882, and the Indian Penal Code.	Sections 1 to 4 (both inclusive).
" ...	X.	Amending the Code of Criminal Procedure, 1882.	The whole.
1895 ...	IV.	Amending sections 366 and 371 of the Code of Criminal Procedure, 1882.	The whole.
1896 ...	XIII.	Amending the Code of Criminal Procedure, 1882.	The whole. •

SCHE

TABULAR STATE

Explanatory Note.—The entries in the second and seventh columns the Indian Penal Code," are not intended as definitions of the offences Indian Penal Code, or even as abstracts of those sections, but merely as the first column.

The third column of this Schedule applies also to the police in the

CHAPTER V.—

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
109	Abetment of any offence, if the act abetted is committed in cosequence, and where no express provision is made for its punishment.	May arrest without warrant if arrest for the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted.
110	Abetment of any offence, if the person abetted does the act with a different intention from that of the abettor.	Ditto ...	Ditto ...
111	Abetment of any offence, when one act is abetted, and . different act is done ; subject to the proviso.	Ditto ...	Ditto ...
113	Abetment of any offence, when an effect is caused by the act abetted different from that intended by the abettor.	Ditto ...	Ditto ...

DULE II.

MENT OF OFFENCES.

of this Schedule, headed respectively, "Offence" and "punishment under and punishments described in the several corresponding sections of the references to the subject of the section, the number of which is given in

towns of Calcutta and Bombay.

ABETMENT.

5	6	7	8
Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
According as the offence abetted is bailable or not.	According as the offence abetted is compoundable or not.	The same punishment as for the offence abetted.	The Court by which the offence abetted is triable.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	The same punishment as for the offence intended to be abetted.	Ditto.
Ditto ...	Ditto ...	The same punishment as for the offence committed.	Ditto.

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
114	Abetment of any offence, if abettor is present when offence is committed.	May arrest without warrant if arrest for the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted.
115	Abetment of an offence punishable with death or transportation for life if the offence be not committed in consequence of the abetment.	Ditto ...	Ditto ...
	If an act which causes harm be done in consequence of the abetment.	Ditto ...	Ditto ...
116	Abetment of an offence punishable with imprisonment if the offence be not committed in consequence of the abetment.	Ditto ...	Ditto ...
	If the abettor or the person abetted be a public servant whose duty it is to prevent the offence.	Ditto ...	Ditto ...

ABETMENT.—(*Continued.*)

5	6	7	8
Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
According as the offence abetted is bailable or not.	According as the offence abetted is compoundable or not.	The same punishment as for the offence committed.	The Court by which the offence abetted is triable.
Not bailable.	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 14 years and fine.	Ditto.
According as the offence abetted is bailable or not.	Ditto ...	Imprisonment extending to a quarter part of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment extending to half of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
117	Abetting the commission of an offence by the public, or by more than ten persons.	May arrest without warrant if arrest for the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted.
118	Concealing a design to commit an offence punishable with death or transportation for life, if the offence be committed.	Ditto ...	Ditto ...
	If the offence be not committed ...	Ditto ...	Ditto ...
119	A public servant concealing a design to commit an offence which it is his duty to prevent, if the offence be committed.	Ditto ...	Ditto ...
	If the offence be punishable with death or transportation for life.	Ditto ...	Ditto ...

ABETMENT.—(*Continued.*)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
According as the offence abetted is bailable or not.	According as the offence abetted is compound- able or not.	Imprisonment of either description for 3 years or fine, or both.	The Court by which the of- fence abetted is triable.
Not bailable	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.
According as the offence abetted is bailable or not.	Ditto ...	Imprisonment extending to half of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.
Not bailable	Ditto ...	Imprisonment of either description for 10 years.	Ditto.

CHAPTER V.—

1	2	3	4
SECTION.	OFFENCE.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
	If the offence be not committed ...	May arrest without warrant if arrest for the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted.
120	Concealing a design to commit an offence punishable with imprisonment, if the offence be committed.	Ditto ...	Ditto ...
	If the offence be not committed.	Ditto ...	Ditto ...

CHAPTER VI.—OFFENCES

121	Waging or attempting to wage war, or abetting the waging of war, against the Queen.	Shall not arrest without warrant.	Warrant ...
121A	Conspiring to commit certain offences against the State.	Ditto ...	Ditto ...

ABETMENT.—(Concluded.)

5	6	7	8
Whether bailable or not	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
According as the offence abetted is bailable or not.	According as the offence abetted is compound- able or not.	Imprisonment extending to a quarter part of the longest term, and of any description, provided for the offence, or fine, or both.	The Court by which the offence abetted is triable.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Imprisonment extending to one-eighth part of the longest term, and of the description, provided for the offence, or fine or both.	Ditto.

AGAINST THE STATE.

Not bailable	Not Com- poundable	Death or transportation for life, and forfeiture of property.	Court of Session.
Ditto	Ditto ...	Transportation for life or any shorter term, or imprisonment of either description for 10 years.	Ditto.

CHAPTER VI.—OFFENCES

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
122	Collecting arms, &c., with the intention of waging war against the Queen.	Shall not arrest without warrant.	Warrant ...
123	Concealing, with intent to facilitate, a design to wage war.	Ditto ...	Ditto ...
124	Assaulting ^r Governor-General, Governor, &c., with intent to compel or restrain the exercise of any lawful power.	Ditto ...	Ditto ...
124A	Sedition	Ditto ...	Ditto ...
125	Waging war against any Asiatic Power in alliance or at peace with the Queen, or abetting the waging of such war.	Ditto ...	Ditto ...

AGAINST THE STATE.—(*Continued*).

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Not bailable	Not com- poundable.	Transportation for life, or imprisonment of either description for 10 years, and forfeiture of proper- ty.	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
Ditto ...	Ditto ...	Transportation for life or for any term and fine, or imprisonment of either description for 3 years and fine, or fine.	• Court of Session, Chief Presiden- cy Magistrate, or District Ma- gistrate or Ma- gistrate of the first class speci- ally empowered by the Local Go- vernment in that behalf.
Ditto ...	Ditto ...	Transportation for life and fine, or imprison- ment of either descrip- tion for 7 years and fine, or fine.	Court of Session

CHAPTER VI.—OFFENCES

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
126	Committing depredation on the territories of any Power in alliance or at peace with the Queen.	Shall not arrest without warrant.	Warrant ...
127	Receiving property taken by war or depredation mentioned in sections 125 and 126.	Ditto ...	Ditto ...
128	Public servant voluntarily allowing prisoner of State or war in his custody to escape.	Ditto ...	Ditto ...
129	Public servant negligently suffering prisoner of State or war in his custody to escape.	Ditto ...	Ditto ...
130	Aiding escape of, rescuing, or harbouring such prisoner, or offering any resistance to the re-capture of such prisoner.	Ditto ...	Ditto ...

CHAPTER VII.—OFFENCES RELATING

131	Abetting mutiny or attempting to seduce an officer, soldier, or sailor from his allegiance or duty.	May arrest without warrant.	Warrant ...
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AGAINST THE STATE (*Concludea*).

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court, triable.
Not bailable.	not com- poundable.	Imprisonment of either description for 7 years and fine, and forfeiture of certain property.	Court of Session.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
Bailable ...	Ditto ...	Simple imprisonment for 3 years and fine.	Court of Session, Présidency Ma- gistrate, or Ma- gistrate of the first class.
Not bailable.	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Ses- sion.

TO THE ARMY AND NAVY.

Not bailable.	Not com- poundable.	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Ses- sion.
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CHAPTER VII.—OFFENCES RELATING

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
132	abetment of mutiny if mutiny is committed in consequence thereof.	May arrest without warrant.	Warrant ...
133	abetment of an assault, by an officer, soldier, or sailor, on his superior officer when in the execution of his office.	Ditto ...	Ditto ...
134	abetment of such assault if the assault is committed.	Ditto ...	Ditto ...
135	abetment of the desertion of an officer, soldier, or sailor.	Ditto ...	Ditto ...
136	Harbouring such an officer, soldier, or sailor who has deserted.	Ditto ...	Ditto ...
137	Deserter concealed on board merchant-vessel through negligence of master or person in charge thereof.	Shall not arrest without warrant.	Summons...
138	abetment of act of insubordination by an officer, soldier, or sailor if the offence be committed in consequence.	May arrest without warrant.	Warrant ...
140	Wearing the dress or carrying any token used by a soldier with intent that it may be believed that he is such a soldier.	Ditto ...	Summons...

TO THE ARMY AND NAVY.—(*Continued.*)

5	6	7	8
Whether bailable or not.	Whether compound- or not.	Punishment under the Indian Penal Code.	By what Court triable.
Not bailable.	Not com- poundable.	Death or transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either de- scription for 3 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either de- scription for 7 years and fine.	Court of Session.
Bailable ...	Ditto ...	Imprisonment of either de- scription for 2 years or fine, or both.	Presidency Ma- gistrate or Ma- gistrate of the first or second class.
Ditto ...	Ditto ...	Ditto , ...	Ditto.
Ditto ...	Ditto ...	Fine of 500 rupees ...	Ditto.
Ditto ...	Ditto ...	Imprisonment of either de- scription for 6 months or fine, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either de- scription for 3 months or fine of 500 rupees, or both.	Any Magistrat-.

CHAPTER VIII.—OFFENCES AGAINST

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
143	Being member of an unlawful assembly.	May arrest without warrant.	Summons...
144	Joining an unlawful assembly, armed with any deadly weapon.	Ditto ...	Warrant ...
145	Joining or continuing in an unlawful assembly knowing that it has been commanded to disperse.	Ditto ...	Ditto ...
147	Rioting ...	Ditto ...	Ditto ...
148	Rioting, armed with a deadly weapon ...	Ditto ...	Ditto ...
149	If an offence be committed by any member of an unlawful assembly, every other member of such assembly shall be guilty of the offence.	According as arrest may be made without warrant for the offence or not.	According as a warrant or summons may issue for the offence.

THE PUBLIC TRANQUILLITY.

5	6	7	8
Whether bailable or not.	Whether compound- or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not com- poundable.	Imprisonment of either description for 6 months or fine, or both.	Any Magistrate.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years or fine, or both.	Ditto.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years or fine, or both.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
According as the offence is bailable or not.	Ditto ...	The same as for the of- fence.	The Court by which the of- fence is triable.

CHAPTER VIII.—OFFENCES AGAINST

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
150	Hiring, engaging, or employing persons to take part in an unlawful assembly.	May arrest without warrant.	According to the offence committed by the person hired, engaged, or employed
151	Knowingly joining or continuing in any assembly of five or more persons after it has been commanded to disperse.	Ditto ...	Summons...
152	Assaulting or obstructing public servant when suppressing riot, etc.	Ditto ...	Warrant ...
153	Wantonly giving provocation with intent to cause riot, if rioting be committed.	Ditto ..	Ditto ...
	If not committed	Ditto ...	Summons...
	Promoting enmity between classes ...	Shall not arrest without warrant.	Warrant ...
154	Owner or occupier of land not giving information of riot, &c.	Ditto ...	Summons...

THE PUBLIC TRANQUILLITY.—(*Continued.*)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
According as the offence is bailable or not.	Not com- poundable.	The same as for a member of such assembly, and for any offence committed by any member of such assembly.	The Court by which the of- fence is triable
Bailable ...	Ditto ...	Imprisonment of either description for 6 months or fine, or both.	Any Magistrate.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years or fine, or both.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 1 year or fine, or both.	Any Magistrate.
Ditto ...	Ditto ...	Imprisonment of either description for 6 months or fine, or both.	Ditto.
Not bailable	Ditto ...	Imprisonment of either description for 2 years or fine, or both.	Presidency Ma- gistrate or Ma- gistrate of the first class.
Bailable ...	Ditto ...	Fine of 1,000 rupees ...	Presidency Ma- gistrate or Ma- gistrate of the first or second class.

CHAPTER VIII.—OFFENCES AGAINST

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
155	Person for whose benefit or on whose behalf a riot takes place not using all lawful means to prevent it.	Shall not arrest without warrant.	Summons...
156	Agent of owner or occupier for whose benefit a riot is committed not using all lawful means to prevent it.	Ditto ...	Ditto ...
157	Harbouring persons hired for an unlawful assembly.	May arrest without warrant.	Ditto ...
158	Being hired to take part in an unlawful assembly or riot.	Ditto ...	Ditto ...
159	Or to go armed ...	Ditto ...	Warrant ...
160	Committing affray ...	Shall not arrest without warrant.	Summons...

CHAPTER IX.—OFFENCES BY OR

161	Being or expecting to be a public servant, and taking a gratification, other than legal remuneration, in respect of an official act.	Shall not arrest without warrant.	Summons...
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THE PUBLIC TRANQUILLITY.—(*Concluded.*)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not com- poundable.	Fine ...	Presidency Magis- trate or Magis- trate of the first or second class.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 6 months or fine, or both.	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years or fine, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 1 month or fine of 100 rupees, or both.	Any Magistrate.

RELATING TO PUBLIC SERVANTS.

Bailable ..	Not com- poundable.	Imprisonment of either description for 3 years or fine, or both.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
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CHAPTER IX.—OFFENCES BY OR RELAT-

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
162	Taking a gratification in order, by corrupt or illegal means, to influence a public servant.	Shall not arrest without warrant.	Summons...
163	Taking a gratification for the exercise of personal influence with a public servant.	Ditto ...	Ditto ...
164	Abetment by public servant of the offences defined in the last two preceding clauses with reference to himself.	Ditto ...	Ditto ...
165	Public servant obtaining any valuable thing, without consideration, from a person concerned in any proceeding or business transacted by such public servant.	Ditto ...	Ditto ...
166	Public servant disobeying a direction of the law with intent to cause injury to any person.	Ditto ...	Ditto ...
167	Public servant framing an incorrect document with intent to cause injury.	Ditto ...	Ditto ...

ING TO PUBLIC SERVANTS.—(*Continued.*)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not com- poundable.	Imprisonment of either description for 3 years or fine, or both.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Simple imprisonment for 1 year or fine or both.	Presidency Ma- gistrate or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years or fine, or both.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Simple imprisonment for 2 years or fine, or both.	Presidency Ma- gistrate or Mag- istrate of the first or second- class.
Ditto ...	Ditto ...	Simple imprisonment for 1 year or fine, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years or fine, or both.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.

CHAPTER IX.—OFFENCES BY OR RELAT-

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily be issued in the first instance.
168	Public servant unlawfully engaging in trade.	Shall not arrest without warrant.	Summons...
169	Public servant unlawfully buying or bidding for property.	Ditto ...	Ditto ...
170	Personating a public servant. ...	May arrest without warrant.	Warrant ...
171	Wearing garb or carrying token used by public servant with fraudulent intent.	Ditto ...	Summons...

CHAPTER X.—CONTEMPTS OF THE LAWFUL

172	Absconding to avoid service of summons or other proceeding from a public servant.	Shall not arrest without warrant.	Summons...
	If summons or notice require attendance in person, &c., in a Court of Justice.	Ditto ...	Ditto ...

ING TO PUBLIC SERVANTS.—(*Concluded.*)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not com- poundable.	Simple imprisonment for 1 year or fine, or both.	Presidency Mag- istrate or Mag- istrate of the first class.
Ditto ...	Ditto ...	Simple imprisonment for 2 years or fine, or both, and confiscation of pro- perty if purchased.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years or fine, or both.	Any Magistrate.
Ditto ...	Ditto ...	Imprisonment of either description for 3 months or fine of 200 rupees, or both.	Ditto.

AUTHORITY OF PUBLIC SERVANTS.

Bailable ...	Not com- poundable.	Simple imprisonment for 1 month or fine of 500 rupees, or both.	Any Magistrate.
Ditto ...	Ditto ...	Simple imprisonment for 6 months or fine of 1,000 rupees, or both.	Ditto.

CHAPTER X.—CONTEMPTS OR THE LAWFUL AUTHOR-

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
173	Preventing the service or the affixing of any summons or notice, or the removal of it when it has been affixed, or preventing a proclamation.	Shall not arrest without warrant.	Summons...
	If summons, &c. require attendance in person, &c., in a Court of Justice.	Ditto ...	Ditto ...
174	Not obeying a legal order to attend at a certain place in person or by agent, or departing therefrom without authority.	Ditto ...	Ditto ...
	If the order require personal attendance, &c., in a Court of Justice.	Ditto ...	Ditto ...
175	Intentionally omitting to produce a document to a public servant by a person legally bound to produce or deliver such document.	Ditto ...	Ditto ...

ITY OF PUBLIC SERVANTS.—(*Continued.*)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not com- poundable.	Simple imprisonment for 1 month or fine of 500 rupees, or both.	Presidency Ma- gistrate or Ma- gistrate of the first or second cla-s.
Ditto ...	Ditto ...	Simple imprisonment for 6 months or fine of 1,000 rupees, or both.	Ditto.
Ditto ...	Ditto ...	Simple imprisonment for 1 month or fine of 500 rupees, or both.	Any Magistrate.
Ditto ...	Ditto ...	Simple imprisonment for 6 months or fine of 1,000 rupees, or both.	Ditto.
Ditto ...	Ditto ...	Simple imprisonment for 1 month or fine of 500 rupees, or both.	The Court in which the offence is committed, subject to the pro- visions of Chap- ter XXXV., or, if not committed in a Court a Presidency Ma- gistrate or Magis- trate of the first or second class.

CHAPTER X.—CONTEMPTS OF THE LAWFUL.

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
175- <i>ctd.</i>	If the document is required to be produced in or delivered to a Court of Justice.	Shall not arrest without warrant.	Summons...
176	Intentionally omitting to give notice or information to a public servant by a person legally bound to give such notice or information.	Ditto ...	Ditto ...
	If the notice or information required respects the commission of an offence, &c.	Ditto ...	Ditto ...
177	Knowingly furnishing false information to a public servant.	Ditto ...	Ditto ...
	If the information required respects the commission of an offence, &c.	Ditto ...	Ditto ...

AUTHORITY OF PUBLIC SERVANTS.—(*Continued.*)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable
Bailable ...	Not com- poundable	Simple imprisonment for 6 months or fine of 1,000 rupees, or both.	The Court in which the offence is committed, subject to the pro- visions of Chap- ter XXXV.; or, if not committed in a Court, a Presidency Ma- gis'trate or Magis- trate of the first or second class.
Ditto ...	Ditto ...	Simple imprisonment for 1 month or fine of 500 rupees, or both.	Presidency Ma- gis'trate or Ma- gis'trate of the first or second class.
Ditto ...	Ditto ...	Simple imprisonment for 6 months or fine of 1,000 rupees, or both.	Ditto.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years or fine, or both.	Ditto.

CHAPTER X.—CONTEMPTS OF THE LAWFUL

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
178	Refusing oath when duly required to take oath by a public servant.	Shall not arrest without warrant.	Summons...
79	Being legally bound to state truth, and refusing to answer questions.	Ditto ...	Ditto ...
80	Refusing to sign a statement made to a public servant when legally required to do so.	Ditto ...	Ditto ...
81	Knowingly stating to a public servant on oath as true that which is false.	Ditto ...	Warrant ...
82	Giving false information to a public servant in order to cause him to use his lawful power to the injury or annoyance of any person.	Ditto ...	Summons...

AUTHORITY OF PUBLIC SERVANTS.—(*Continued.*)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not com- poundable.	Simple imprisonment for 6 months or fine of 1,000 rupees, or both.	The Court in which the of- fence is commit- ted, subject to the provisions of Chapter XXXV.; or, if not committed in a Court a Presidency Ma- gistrate or Ma- gistrate of the first or second class.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Simple imprisonment for 3 months or fine of 500 rupees, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class,
Ditto ...	Ditto ...	Imprisonment of either description for 6 months or fine of 1,000 rupees, or both.	Presidency Ma- gistrate or Ma- gistrate of the first or second class.

CHAPTER X.—CONTEMPTS OF THE LAWFUL-

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not	Whether a warrant or a summons shall ordinarily issue in the first instance.
183	Resistance to the taking of property by the lawful authority of a public servant.	Shall not arrest without warrant.	Summons...
184	Obstructing sale of property offered for sale by authority of a public servant.	Ditto ...	Ditto ...
185	Bidding, by a person under a legal incapacity to purchase it, for property at a lawfully authorized sale, or bidding without intending to perform the obligations incurred thereby.	Ditto ...	Ditto ...
186	Obstructing public servant in discharge of his public functions.	Ditto ...	Ditto ...
187	Omission to assist public servant when bound by law to give such assistance.	Ditto ...	Ditto ...
	Wilfully neglecting to aid a public servant who demands aid in the execution of process, the prevention of offences, &c.	Ditto ...	Ditto ...

AUTHORITY OF PUBLIC SERVANTS.—(*Continued.*)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not com- poundable.	Imprisonment of* either description for 6 months or fine of 1,000 rupees, or both.	Presidency Ma- gistrate or Ma- gistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 1 month or fine of 500 rupees, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 1 month or fine of 200 rupees, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 3 months or fine of 500 rupees, or both.	Ditto.
Ditto ...	Ditto ...	Simple imprisonment for 1 month or fine of 200 rupees, or both.	Ditto.
Ditto ...	Ditto ...	Simple imprisonment for 6 months or fine of 500 rupees, or both.	Ditto.

CHAPTER X.—CONTEMPTS OF THE LAWFUL.

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
188	Disobedience to an order lawfully promulgated by a public servant, if such disobedience causes obstruction, annoyance, or injury to persons lawfully employed.	Shall not arrest without warrant.	Summons...
	If such disobedience causes danger to human life, health, or safety, &c.	Ditto ...	Ditto ...
189	Threatening a public servant with injury to him, or one in whom he is interested, to induce him to do or forbear to do any official act.	Ditto ...	Ditto ...
190	Threatening any person to induce him to refrain from making a legal application for protection from injury.	Ditto ...	Ditto ...

CHAPTER XI.—FALSE EVIDENCE AND

193	Giving or fabricating false evidence in a judicial proceeding.	Shall not arrest without warrant.	Warrant ...
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AUTHORITY OF PUBLIC SERVANTS.—(*Concluded.*)

5	6	7	8
Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not compoundable.	Simple imprisonment for 1 month or fine of 200 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 6 months or fine of 1,000 rupees, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years or fine, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 1 year or fine, or both.	Ditto.

OFFENCES AGAINST PUBLIC JUSTICE.

Bailable ...	Not compoundable.	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
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CHAPTER XI.—FALSE EVIDENCE AND

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
	Giving or fabricating false evidence in any other case.	Shall not arrest without warrant.	Warrant ...
194	Giving or fabricating false evidence with intent to cause any person to be convicted of a capital offence.	Ditto ...	Ditto ...
	If innocent person be thereby convicted and executed.	Ditto ...	Ditto ...
195	Giving or fabricating false evidence with intent to procure conviction of an offence punishable with transportation for life or with imprisonment for seven years or upwards.	Ditto ...	Ditto ...
196	Using in a judicial proceeding evidence known to be false or fabricated.	Ditto ...	Ditto ...
197	Knowingly issuing or signing a false certificate relating to any fact of which such certificate is by law admissible in evidence.	Ditto ...	Ditto ...

OFFENCES AGAINST PUBLIC JUSTICE.—(*Continued.*)

5	6	7	8
Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not compoundable.	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
Not bailable.	Ditto ...	Transportation for life or rigorous imprisonment for 10 years and fine.	Court of Session.
Ditto ...	Ditto ...	Death, or as above ...	Ditto.
Bailable ...	Ditto ...	The same as for the offence.	Ditto.
According as the offence of giving such evidence is bailable or not.	Ditto ...	The same as for giving or fabricating false evidence.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
Bailable ...	Ditto ...	The same as for giving false evidence.	Ditto.

CHAPTER XI.—FALSE EVIDENCE AND OF-

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
198	Using as a true certificate one known to be false in a material point.	Shall not arrest without warrant.	Warrant ...
199	False statement made in any declaration which is by law receivable as evidence.	Ditto ...	Ditto ...
200	Using as true any such declaration known to be false.	Ditto ...	Ditto ...
201	Causing disappearance of evidence of an offence committed, or giving false information touching it to screen the offender, if a capital offence.	Ditto ...	Ditto ...
	If punishable with transportation for life or imprisonment for 10 years.	Ditto ...	Ditto ...
	If punishable with less than 10 years' imprisonment.	Ditto ...	Ditto ...
202	Intentional omission to give information of an offence by a person legally bound to inform.	Ditto ...	Summons ...

OFFENCES AGAINST PUBLIC JUSTICE.—(*continued.*)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not com- poundable.	The same as for giving false evidence.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Imprisonment for a quar- ter of the longest term, and of the description provided for the offence, or fine, or both.	Presidency Magis- trate or Magis- trate of the first class, or Court by which the of- fence is triable.
Ditto ...	Ditto ...	Imprisonment of either description for 6 months or fine, or both.	Presidency Ma- gistrate or Ma- gistrate of the first or second class.

CHAPTER XI.—FALSE EVIDENCE AND OF-

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
203	Giving false information respecting an offence committed.	Shall not arrest without warrant.	Warrant ...
204	Secreting or destroying any document to prevent its production as evidence.	Ditto ...	Ditto ...
205	False personation for the purpose of any act or proceeding in a suit or criminal prosecution, or for becoming bail or security.	Ditto ...	Ditto ...
206	Fraudulent removal or concealment &c., of property to prevent its seizure as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree.	Ditto ...	Ditto ...
207	Claiming property without right, or practising deception touching any right to it, to prevent its being taken as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree.	Ditto ...	Ditto ...

FENCES AGAINST PUBLIC JUSTICE.—(*Continued.*)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not com- poundable	Imprisonment of either description for 2 years or fine, or both.	Presidency Ma- gistrate or Ma- gistrate of the first or second class.
Ditto ...	Ditto ...	Ditto ...	Presidency Ma- gistrate or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years or fine, or both.	Court of Session Presidency Ma- gistrate, or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years or fine, or both.	Presidency Ma- gistrate or Ma- gistrate of the first or second class.
Ditto ...	Ditto ...	Ditto ...	Ditto

SCH. II.—STATEMENT OF OFFENCES.

CHAPTER XI.—FALSE EVIDENCE AND OF-

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
208	Fraudulently suffering a decree to pass for a sum not due, or suffering decree to be executed after it has been satisfied.	Shall not arrest without warrant.	Warrant ...
209	False claim in a Court of Justice ...	Ditto ...	Ditto ...
210	Fraudulently obtaining a decree for a sum not due, or causing a decree to be executed after it has been satisfied..	Ditto ...	Ditto ...
211	False charge of offence made with intent to injure.	Ditto ...	Ditto ...
	If offence charged be punishable with imprisonment for seven years or upwards.	Ditto ...	Ditto ...
	If offence charged be capital, or punishable with transportation for life.	Ditto ...	Ditto ...
212	Harbouring an offender, if the offence be capital.	May arrest without warrant.	Ditto ...
	If punishable with transportation for life, or with imprisonment for 10 years.	Ditto ...	Ditto ...

FENCES AGAINST PUBLIC JUSTICE.—(*Continued.*)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not com- poundable.	Imprisonment of either description for 2 years or fine, or both.	Presidency Ma- gistrate or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years or fine, or both.	Ditto.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session Presidency Ma- gistrate, or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Ditto ...	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either description for 5 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.

CHAPTER XI.—FALSE EVIDENCE AND OF—

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
212- <i>ctd.</i>	If punishable with imprisonment for 1 year, and not for 10 years.	May arrest without warrant.	Warrant ...
213	Taking gift, &c., to screen an offender from punishment, if the offence be capital.	Shall not arrest without warrant.	Ditto ...
	If punishable with transportation for life or with imprisonment for 10 years.	Ditto ...	Ditto ...
	If with imprisonment for less than 10 years.	Ditto ...	Ditto ...
214	Offering gift or restoration of property in consideration of screening offender, if the offence be capital.	Ditto ...	Ditto ...
	If punishable with transportation for life, or with imprisonment for 10 years.	Ditto ...	Ditto ...

OFFENCES AGAINST PUBLIC JUSTICE.—(*Continued.*)

5	6	7	8
Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not compoundable.	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.	Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.	Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.

CHAPTER XI.—FALSE EVIDENCE AND OF.

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
	If with imprisonment for less than 10 years.	Shall not arrest without warrant.	Warrant ...
215	Taking gift to help to recover moveable property of which a person has been deprived by an offence, without causing apprehension of offender.	Ditto ...	Ditto ...
216	Harbouring an offender who has escaped from custody or whose apprehension has been ordered, if the offence be capital.	May arrest without warrant.	Ditto ...
	If punishable with transportation for life, or with imprisonment for 10 years.	Ditto ...	Ditto ...
	If with imprisonment for 1 year, and not for 10 years.	Ditto ...	Ditto ...
216A	Harbouring robbers or dacoits ...	Ditto ...	Ditto ...

OFFENCES AGAINST PUBLIC JUSTICE.—(Continued.)

5	6	7	8
Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court. triable.
Bailable ...	Not compoundable.	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.	Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years or fine, or both.	Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years, with or without fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.	Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable.
Ditto ...	Ditto ...	Rigorous imprisonment for 7 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.

CHAPTER XI.—FALSE EVIDENCE AND OF-

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
217	Public servant disobeying a direction of law with intent to save person from punishment, or property from forfeiture.	Shall not arrest without warrant.	Summons ...
218	Public servant framing an incorrect record or writing with intent to save person from punishment, or property from forfeiture.	Ditto ...	Warrant ...
219	Public servant in a judicial proceeding corruptly making and pronouncing an order, report, verdict, or decision which he knows to be contrary to law.	Ditto ...	Ditto ...
220	Commitment for trial or confinement by a person having authority, who knows that he is acting contrary to law.	Ditto ...	Ditto ...
221	Intentional omission to apprehend on the part of a public servant bound by law to apprehend an offender, if the offence be capital.	Ditto ...	Ditto ...
	If punishable with transportation for life or imprisonment for 10 years.	Ditto ...	Ditto ...

FENCES AGAINST PUBLIC JUSTICE.—(*Continued.*)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not com- poundable.	Imprisonment of either description for 2 years or fine, or both.	Presidency Ma- gistrate or Ma- gistrate of the first or second class. 1
Ditto ...	Ditto ...	Imprisonment of either description for 3 years or fine, or both.	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years or fine, or both.	Ditto.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years, with or without fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years, with or without fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.

CHAPTER XI.—FALSE EVIDENCE AND OF-

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
221— <i>ctd.</i>	If with imprisonment for less than 10 years.	Shall not arrest without warrant.	Warrant ...
222	Intentional omission to apprehend on the part of a public servant bound by law to apprehend person under sentence of a Court of Justice, if under sentence of death. If under sentence of transportation or penal servitude for life, or transportation, imprisonment, or penal servitude for 10 years or upwards. If under sentence of imprisonment for less than 10 years, or lawfully committed to custody.	Ditto ... Ditto ... Ditto ...	Ditto ... Ditto ... Ditto ...
223	Escape from confinement negligently suffered by a public servant.	Ditto ...	Summons...
224	Resistance or obstruction by a person to his lawful apprehension.	May arrest without warrant.	Warrant ...
225	Resistance or obstruction to the lawful apprehension of another person, or rescuing him from lawful custody.	Ditto ...	Ditto ...

OFFENCES AGAINST PUBLIC JUSTICE.—(Continued.)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not com- poundable.	Imprisonment of either description for 2 years, with or without fine.	Presidency Ma- gistrate or Ma- gistrate of the first or second class.
Not bailable.	Ditto ...	Transportation for life or imprisonment of either description for 14 years, with or without fine.	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years, with or without fine.	Ditto
Bailable ...	Ditto ...	Imprisonment of either description for 3 years or fine, or both.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Simple imprisonment for 2 years or fine, or both.	Presidency Ma- gistrate or Ma- gistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years or fine, or both.	Ditto.
Ditto ...	Ditto ...	Ditto ...	Ditto.

CHAPTER XI.—FALSE EVIDENCE AND OF-

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
125- <i>cta</i> ..	If charged with an offence punishable with transportation for life or imprisonment for 10 years. If charged with a capital offence ... If the person is sentenced to transportation for life, or to transportation, penal servitude, or imprisonment for 10 years or upwards. If under sentence of death ...	May arrest without warrant. Ditto ... Ditto ... Ditto ...	Warrant ... Ditto ... Ditto ... Ditto ...
125A	Omission to apprehend, or sufferance of escape, on part of public servant, in cases not otherwise provided for— (a) in case of intentional omission or sufferance . (b) in case of negligent omission or sufferance ;	Shall not arrest without warrant. Ditto ...	Ditto ... Summons...

FENCES AGAINST PUBLIC JUSTICE.—(*Continued.*)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Not bailable.	Not com- poundable.	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Transportation for life or imprisonment of either description for 10 years and fine.	Ditto.
Bailable ...	Ditto ...	Imprisonment of either description for 3 years or or fine, or both.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Simple imprisonment for 2 years or fine, or both.	Presidency Ma- gistrate or Ma- gistrate of the first or second class.

CHAPTER XI.—FALSE EVIDENCE AND OF-

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance
225B	Resistance or obstruction to lawful apprehension, or escape or rescue, in cases not otherwise provided for.	May arrest without warrant.	Warrant ...
226	Unlawful return from transportation ...	Ditto ...	Ditto ...
227	Violation of condition of remission of punishment.	Shall not arrest without warrant.	Summons...
228	Intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding.	Ditto ...	Ditto ...
229	Personation of a juror or assessor ...	Ditto ...	Ditto ...

CHAPTER XII.—OFFENCES RELATING TO

231	Counterfeiting, or performing any part of the process of counterfeiting, coin.	May arrest without warrant.	Warrant ...
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FENCES AGAINST PUBLIC JUSTICE.—(*Concluded*).

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not com- poundable.	Imprisonment of either description for 6 months or fine, or both.	Presidency Ma- gistrate or Ma- gistrate of the first or second class.
Not bailable.	Ditto ...	Transportation for life and fine and rigorous imprisonment for 3 years before transportation.	Court of Session.
Ditto ...	Ditto ...	Punishment of original sentence, or, if part of the punishment has been undergone, the residue.	The Court by which the origi- nal offence was triable.
Bailable ...	Ditto ...	Simple imprisonment for 6 months or fine of 1,000 rupees, or both.	The Court in which the of- fence is commit- ted, subject to the provisions of Chapter XXXV.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years or fine, or both.	Presidency Ma- gistrate or Ma- gistrate of the first class.

COIN AND GOVERNMENT STAMPS.

Not bailable.	Not com- poundable.	Imprisonment of either description for 7 years and fine.	Court of Session.
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CHAPTER XII.—OFFENCES RELATING TO

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
232	Counterfeiting, or performing any part of the process of counterfeiting, the Queen's coin	May arrest without warrant.	Warrant ...
233	Making, buying, or selling instrument for the purpose of counterfeiting coin.	Ditto ...	Ditto ...
234	Making, buying, or selling instrument for the purpose of counterfeiting the Queen's coin.	Ditto ...	Ditto ...
235	Possession of instrument or material for the purpose of using the same for counterfeiting coin.	Ditto ...	Ditto ...
	If Queen's coin ...	Ditto ...	Ditto ...
236	Abetting in British India the counterfeiting out of British India of coin.	Ditto ...	Ditto ...
237	Import or export of counterfeit coin, knowing the same to be counterfeit.	Ditto ...	Ditto ...

COIN AND GOVERNMENT STAMPS.—(Continued.)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Not bailable.	Not com- poundable.	Transportation for life or imprisonment of either description for 10 years and fine.	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Court of Session.
Ditto ...	Ditto ...	The punishment provided for abetting the counter- feiting of such coin with- in British India.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.

CHAPTER XII.—OFFENCES RELATING TO

1	2	3	4
SECTION.	OFFENCE.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
238	Import or export of counterfeits of the Queen's coin, knowing the same to be counterfeit	May arrest without warrant.	Warrant ...
239	Having any counterfeit coin known to be such when it came into possession, and delivering, &c., the same to any person.	Ditto ...	Ditto ...
240	The same with respect to the Queen's coin.	Ditto ...	Ditto ...
241	Knowingly delivering to another any counterfeit coin as genuine which, when first possessed, the deliverer did not know to be counterfeit.	Ditto ...	Ditto ...
242	Possession of counterfeit coin by a person who knew it to be counterfeit when he became possessed thereof.	Ditto ...	Ditto ...
243	Possession of Queen's coin by a person who knew it to be counterfeit when he became possessed thereof.	Ditto ...	Ditto ...

COIN AND GOVERNMENT STAMPS.—(*Continued.*)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Not bailable.	Not com- poundable.	Transportation for life or imprisonment of either description for 10 years and fine.	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either description for 5 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years or fine of ten times the value of the coin counter- feited, or both.	Presidency Ma- gistrate or Ma- gistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.

CHAPTER XII.—OFFENCES RELATING TO

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
244	Person employed in a Mint causing coin to be of a different weight or composition from that fixed by law.	May arrest without warrant.	Warrant ...
245	Unlawfully taking from a Mint any coining instrument.	Ditto ...	Ditto ...
246	Fraudulently diminishing the weight or altering the composition of any coin.	Ditto ...	Ditto ...
247	Fraudulently diminishing the weight or altering the composition of the Queen's coin.	Ditto ...	Ditto ...
248	Altering appearance of any coin with intent that it shall pass as a coin of a different description.	Ditto ...	Ditto ...
249	Altering appearance of the Queen's coin with intent that it shall pass as a coin of a different description.	Ditto ...	Ditto ...
250	Delivery to another of coin possessed with the knowledge that it is altered.	Ditto ...	Ditto ...
251	Delivery of Queen's coin possessed with the knowledge that it is altered.	Ditto ...	Ditto ...

COIN AND GOVERNMENT STAMPS.—(*Continued.*)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Not bailable.	Not com- poundable	Imprisonment of either description for 7 years and fine.	Court of Session.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 5 years and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.

CHAPTER XII.—OFFENCES RELATING TO

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
252	Possession of altered coin by a person who knew it to be altered when he became possessed thereof.	May arrest without warrant.	Warrant ...
253	Possession of Queen's coin by a person who knew it to be altered when he became possessed thereof.	Ditto ...	Ditto ...
254	Delivery to another of coin as genuine which, when first possessed, the deliverer did not know to be altered.	Ditto ...	Ditto ...
255	Counterfeiting a Government stamp ...	Ditto ...	Ditto ...
256	Having possession of an instrument or material for the purpose of counterfeiting a Government stamp.	Ditto ...	Ditto ...
257	Making, buying, or selling instrument for the purpose of counterfeiting a Government stamp.	Ditto ...	Ditto ...
258	Sale of counterfeit Government stamp ...	Ditto ...	Ditto ...

COIN AND GOVERNMENT STAMPS.—(*Concluded.*)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Not bailable	Not com- poundable.	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 5 years and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years or fine of ten times the value of the coin.	Presidency Magis- trate or Magis- trate of the first or second class.
Bailable ...	Ditto ...	Transportation for life or imprisonment of either description for 10 years and fine.	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Ditto ...	Ditto.

CHAPTER XII.—OFFENCES RELATING TO

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
259	Having possession of a counterfeit Government stamp.	May arrest without warrant.	Warrant ...
260	Using as genuine a Government stamp known to be counterfeit.	Ditto ...	Ditto ...
261	Effacing any writing from a substance bearing a Government stamp, or removing from a document a stamp used for it with intent to cause loss to Government.	Ditto ...	Ditto ...
262	Using a Government stamp known to have been before used.	Ditto ...	Ditto ...
263	Erasure of mark denoting that stamp has been used.	Ditto ...	Ditto ...
263A	Fictitious stamps ...	Ditto ...	Ditto ...

COIN AND GOVERNMENT STAMPS.—(*Concluded.*)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable
Bailable ...	Not com- poundable.	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class
Ditto ...	Ditto ...	Imprisonment of either description for 7 years or fine, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years or fine, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years or fine, or both.	Presidency Magis- trate or Magis- trate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years or fine, or both.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Fine of 200 rupees ...	Presidency Ma- gistrate or Ma- gistrate of the first class.

CHAPTER XIII.—OFFENCES RELATING TO

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
264	Fraudulent use of false instrument for weighing.	Shall not arrest without warrant.	Summons...
265	Fraudulent use of false weight or measure.	Ditto ...	Ditto ...
266	Being in possession of false weights or measures for fraudulent use.	Ditto ...	Ditto ...
267	Making or selling false weights or measures for fraudulent use.	Ditto ...	Ditto ...

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH

269	Negligently doing any act known to be likely to spread infection of any disease dangerous to life.	May arrest without warrant.	Summons...
270	Malignantly doing any act known to be likely to spread infection of any disease dangerous to life.	Ditto ...	Ditto ...
271	Knowingly disobeying any quarantine rule.	Shall not arrest without warrant.	Ditto ...
272	Adulterating food or drink intended for sale so as to make the same noxious.	Ditto ...	Ditto ...

WEIGHTS AND MEASURES.

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not com- poundable.	Imprisonment of either description for 1 year or fine, or both	Presidency Magis- trate or Magis- trate of the first or second class.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Ditto ...	Ditto

SAFETY, CONVENIENCE, DECENCY, AND MORALS.

Bailable ...	Not com- poundable.	Imprisonment of either description for 6 months or fine, or both.	Presidency Magis- trate or Magis- trate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years or fine, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 6 months or fine, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 6 months or fine of 1,000 rupees, or both.	Ditto.

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH,

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
273	Selling any food or drink as food and drink knowing the same to be noxious.	Shall not arrest without warrant.	Summons...
274	Adulterating any drug or medical preparation intended for sale so as to lessen its efficacy, or to change its operation, or to make it noxious.	Ditto ...	Ditto ...
275	Offering for sale or issuing from a dispensary any drug or medical preparation known to have been adulterated.	Ditto ...	Ditto ...
276	Knowingly selling or issuing from a dispensary any drug or medical preparation as a different drug or medical preparation.	Ditto ...	Ditto ...
277	Defiling the water of a public spring or reservoir.	May arrest without warrant.	Ditto ...
278	Making atmosphere noxious to health ...	Shall not arrest without warrant.	Ditto ...
279	Driving or riding on a public way so rashly or negligently as to endanger human life, &c.	May arrest without warrant.	Ditto ...

SAFETY, CONVENIENCE, DECENCY, AND MORALS.—(*Continued.*)

5	6	7	8
Whether bailable or not.	Whether compound- or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not com- poundable.	Imprisonment of either description for 6 months or fine of 1,000 rupees, or both.	Presidency Ma- gistrate or Ma- gistrate of the first or second class.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 3 months or fine of 500 rupees, or both.	Any Magistrate.
Ditto ...	Ditto ...	Fine of 500 rupees ...	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 6 months or fine of 1,000 rupees, or both.	Ditto.

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH,

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
280	Navigating any vessel so rashly or negligently as to endanger human life, &c.	May arrest without warrant.	Summons...
281	Exhibition of a false light, mark, or buoy.	Ditto ...	Warrant ...
282	Conveying for hire any person by water in a vessel in such a state, or so loaded, as to endanger his life.	Ditto ...	Summons...
283	Causing danger, obstruction, or injury in any public way or line of navigation.	Ditto ...	Ditto ...
284	Dealing with any poisonous substance so as to endanger human life, &c.	Shall not arrest without warrant.	Ditto ...
285	Dealing with fire or any combustible matter so as to endanger human life, &c.	May arrest without warrant.	Ditto ...
286	So dealing with any explosive substance.	Ditto ...	Ditto ...
287	So dealing with any machinery ...	Shall not arrest without warrant.	Ditto ...

SAFETY, CONVENIENCE, DECENCY. AND MORALS.—(*Continued.*)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not com- poundable	Imprisonment of either description for 6 months or fine of 1,000 rupees, or both.	Presidency Magis- trate or Magis- trate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years or fine, or both.	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either description for 6 months or fine of 1,000 rupees, or both.	Presidency Ma- gistrate or Ma- gistrate of the first or second class.
Ditto ...	Ditto ...	Fine of 200 rupees ...	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 6 months or fine of 1,000 rupees, or both.	Ditto.
Ditto ...	Ditto ...	Ditto ...	Any Magistrate.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Ditto ...	Presidency Ma- gistrate or Ma- gistrate of the first or second class.

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH,

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
288	A person omitting to guard against probable danger to human life by the fall of any building over which he has a right entitling him to pull it down or repair it.	Shall not arrest without warrant.	Summons...
289	A person omitting to take order with any animal in his possession, so as to guard against danger to human life, or of grievous hurt, from such animal.	May arrest without warrant.	Ditto ...
290	Committing a public nuisance ...	Shall not arrest without warrant.	Ditto ...
291	Continuance of nuisance after injunction to discontinue.	May arrest without warrant.	Ditto ...
292	Sale, &c., of obscene books, &c. ...	Ditto ...	Warrant ...
293	Having in possession obscene books, &c., for sale or exhibition.	Ditto ...	Ditto ...
294	Obscene songs.	Ditto ...	Ditto ...

SAFETY, CONVENIENCE, DECENCY, AND MORALS.—(*Continued.*)

5	6	7	8
Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not compoundable.	Imprisonment of either description for 6 months or fine of 1,000 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Ditto ...	Any Magistrate.
Ditto ...	Ditto ...	Fine of 200 rupees ...	Ditto ...
Ditto ...	Ditto ...	Simple imprisonment for 6 months or fine or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 3 months or fine, or both.	Ditto.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Ditto ...	Ditto ...

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH,

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
294A	Keeping a lottery office ...	Shall not arrest without warrant.	Summons...
	Publishing proposals relating to lotteries	Ditto ...	Ditto ...

CHAPTER XV.—OFFENCES

295	Destroying, damaging, or defiling a place of worship or sacred object with intent to insult the religion of any class of persons.	May arrest without warrant.	Summons...
296	Causing a disturbance to an assembly engaged in religious worship.	Ditto ...	Ditto ...
297	Trespassing in place of worship or sepulture, disturbing funeral, with intention to wound the feelings, or to insult the religion, of any person, or offering indignity to a human corpse.	Ditto ...	Ditto ...
298	Uttering any word or making any sound in the hearing, or making any gesture, or placing any object, in the sight, of any person, with intention to wound his religious feeling.	Shall not arrest without warrant.	Ditto ...

SAFETY, CONVENIENCE, DECENCY, AND MORALS.—(*Concluded.*)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not com- poundable.	Imprisonment of either description for 6 months or fine, or both.	Any Magistrate.
Ditto ...	Ditto ...	Fine of 1,000 rupees ...	Ditto.

RELATING TO RELIGION.

Bailable ...	Not com- poundable.	Imprisonment of either description for 2 years or fine, or both.	Presidency Ma- gistrate, or Ma- gistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 1 year or fine, or both.	Ditto.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Compound- able.	Ditto ...	Ditto.

CHAPTER XVI.—OFFENCES AFFECTING

Of Offences

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
302	Murder ...	May arrest without warrant	Warrant ...
303	Murder by a person under sentence of transportation for life.	Ditto ...	Ditto ...
304	Culpable homicide not amounting to murder if act by which the death is caused is done with intention of causing death, &c.	Ditto ...	Ditto ...
	If act is done with knowledge that it is likely to cause death, but without any intention to cause death, &c.	Ditto ...	Ditto ...
304A	Causing death by rash or negligent act...	Ditto ...	Ditto ...
305	Abetment of suicide committed by a child or insane or delirious person, or an idiot, or a person intoxicated.	Ditto ...	Ditto ...
306	Abetting the commission of suicide. ...	Ditto ...	Ditto ...

THE HUMAN BODY.

affecting Life.

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Not bailable.	Not com- poundable	Death or transportation for life and fine.	Court of Session.
Ditto ...	Ditto ...	Death ...	Ditto.
Ditto ...	Ditto ...	Transportation for life or imprisonment of either description for 10 years and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either de- scription for 10 years or fine, or both.	Ditto.
Bailable ...	Ditto ...	Imprisonment of either de- scription for 2 years or fine, or both.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
Not bailable.	Ditto ...	Death or transportation for life or imprisonment for 10 years and fine.	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either de- scription for 10 years and fine.	Ditto.

CHAPTER XVI.—OFFENCES AFFECTING

Of Offences affecting

1	2	3	4
SECTION.	OFFENCE	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
307	Attempt to murder ...	May arrest without warrant.	Warrant ...
	If such act cause hurt to any person ...	Ditto ...	Ditto ...
308	Attempt by life-convict to murder, if hurt is caused.	Ditto ...	Ditto ...
	Attempt to commit culpable homicide ...	Ditto ...	Ditto ...
	If such act cause hurt to any person ...	Ditto ...	Ditto ...
309	Attempt to commit suicide ...	Ditto ...	Ditto ...
311	Being a thug ...	Ditto ...	Ditto ...

Of the Causing of Miscarriage ; of Injuries to Unborn Children ;

312	Causing miscarriage ...	Shall not arrest without warrant.	Warrant ...
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THE HUMAN BODY.—(*Continued.*)*Life.*—(*Continued.*)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the, Indian Penal Code.	By what Court triable.
Not bailable	Not com- poundable	Imprisonment of either description for 10 years and fine.	Court of Session.
Ditto ...	Ditto ...	Transportation for life or as above.	Ditto.
Ditto ...	Ditto ...	Death or as above ...	Ditto.
Bailable ...	Ditto ...	Imprisonment of either description for 3 years or fine, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years or fine, or both.	Ditto.
Ditto ...	Ditto ...	Simple imprisonment for 1 year or fine, or both.	Presidency Magis- trate or Magis- trate of the first or second class.
Not bailable.	Ditto ...	Transportation for life and fine.	Court of Session.

of the Exposure of Infants ; and of the Concealment of Births. .

Bailable ...	Not com- poundable.	Imprisonment of either description for 3 years or fine, or both.	Court of Session.
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CHAPTER XVI.—OFFENCES AFFECTING

Of the Causing of Miscarriage ; of Injuries to Unborn Children ;

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
312- <i>ctd.</i>	If the woman be quick with child ...	Shall not arrest without warrant.	Warrant ...
313	Causing miscarriage without woman's consent.	Ditto ...	Ditto ...
314	Death caused by an act done with intent to cause miscarriage.	Ditto ...	Ditto ...
	If act done without woman's consent ...	Ditto ...	Ditto ...
315	Act done with intent to prevent a child being born alive, or to cause it to die after its birth.	Ditto ...	Ditto ...
316	Causing death of a quick unborn child by an act amounting to culpable homicide.	Ditto ...	Ditto ...
317	Exposure of a child under 12 years of age by parent or person having care of it with intention of wholly abandoning it.	May arrest without warrant.	Ditto ...

THE HUMAN BODY.—(*Continued.*)*of the Exposure of Infants ; and of the Concealment of Births.—(Contd.)*

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not com- poundable.	Imprisonment of either description for 7 years and fine.	Court of Session.
Not bailable.	Ditto ...	Transportation for life or imprisonment of either description for 10 years and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine	Ditto.
Ditto ...	Ditto ...	Transportation for life or as above.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 10 years or fine, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
Bailable ...	Ditto ...	Imprisonment of either description for 7 years or fine, or both.	Ditto.

CHAPTER XVI.—OFFENCES AFFECTING

Of Concealment

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
318	Concealment of birth by secret disposal of dead body.	May arrest without warrant.	Warrant ...

Of

323	Voluntarily causing hurt ...	Shall not arrest without warrant.	Summons...
324	Voluntarily causing hurt by dangerous weapons or means.	May arrest without warrant.	Ditto ...
325	Voluntarily causing grievous hurt ...	Ditto ...	Ditto ...

THE HUMAN BODY.—(*Continued.*)*of Births.*—(Concluded.)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not com- poundable.	Imprisonment of either description for 2 years or fine, or both.	Court of Session, Presidency Ma- gistrate or Mag- istrate of the first or second- class.

Hurt.

Bailable ...	Compound- able.	Imprisonment of either description for 1 year or fine of 1,000 rupees, or both.	Any Magistrate.
Ditto ...	Compound- able when permission is given by the Court before which a prosecution is pending.	Imprisonment of either description for 3 years or fine, or both.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.

CHAPTER XVI.—OFFENCES AFFECTING

Of Hurt.—

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
326	Voluntarily causing grievous hurt by dangerous weapons or means.	May arrest without warrant.	Summons...
327	Voluntarily causing hurt to extort property or a valuable security, or to constrain to do anything which is illegal, or which may facilitate the commission of an offence.	Ditto ...	Warrant ...
328	Administering stupefying drug with intent to cause hurt, &c.	Ditto ...	Ditto ...
329	Voluntarily causing grievous hurt to extort property or a valuable security, or to constrain to do anything which is illegal, or which may facilitate the commission of an offence.	Ditto ...	Ditto ...
330	Voluntarily causing hurt to extort confession or information, or to compel restoration of property, &c.	Ditto ...	Ditto ...
331	Voluntarily causing grievous hurt to extort confession or information, or to compel restoration of property, &c.	Ditto ...	Ditto ...
332	Voluntarily causing hurt to deter public servant from his duty.	Ditto ...	Ditto ...

THE HUMAN BODY.—(*Continued.*)

(Continued.)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Not bail- able.	Not com- poundable.	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Court of Session.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Transportation for life or imprisonment of either description for 10 years and fine.	Ditto.
Bailable ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
Not bailable.	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
Bailable ...	Ditto ...	Imprisonment of either description for 3 years or fine, or both.	Court of Session, Presidency Ma- gistrate or Mag- istrate of the first class.

CHAPTER XVI.—OFFENCES AFFECTING

Of Hurt—

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
333	Voluntarily causing grievous hurt to deter public servant from his duty.	May arrest without warrant.	Warrant ...
334	Voluntarily causing hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation.	Shall not arrest without warrant.	Summons...
335	Causing grievous hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation.	May arrest without warrant.	Ditto ...
336	Doing any act which endangers human life or the personal safety of others.	Ditto ...	Ditto ...
337	Causing hurt by an act which endangers human life &c.	Ditto ...	Ditto ...

THE HUMAN BODY —(Continued)

(Continued.)

5	6	7	8
Whether bailable or not,	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Not bail- able.	Not com- poundable.	Imprisonment of either description for 10 years and fine.	Court of Session.
Bailable ...	Compound- able.	Imprisonment of either description for 1 month or fine of 500 rupees, or both.	Any Magistrate-
Ditto ...	Compound- able when permission is given by the Court before which a prosecu- tion is pending.	Imprisonment of either description for 4 years or fine of 2,000 rupees, or both.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first or second class.
Ditto ...	Not com- poundable.	Imprisonment of either description for 3 months or fine of 250 rupees, or both.	Any Magistrate.
Ditto ...	Compound- able when permission is given by the Court before which a prosecu- tion is pending.	Imprisonment of either description for 6 months or fine of 500 rupees, or both.	Presidency Ma- gistrate or Ma- gistrate of the first or second class.

CHAPTER XVI.—OFFENCES AFFECTING

Of Hurt—

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
338	Causing grievous hurt by an act which endangers human life, &c.	May arrest without warrant.	Summons...

Of Wrongful Restraint and

341	Wrongfully restraining any person ...	May arrest without warrant.	Summons...
342	Wrongfully confining any person ...	Ditto ...	Ditto ...
343	Wrongfully confining for three or more days.	Ditto ...	Ditto ...
344	Wrongfully confining for ten or more days.	Ditto ...	Ditto ...

THE HUMAN BODY.—(*Continued.*)

(Concluded.)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Compound- able when permission is given by the Court before which a prosecution is pending.	Imprisonment of either description for 2 years or fine of 1,000 rupees, or both.	Presidency Ma- gistrate or Ma- gistrate of the first or second class.

Wrongful Confinement.

Bailable ...	Compound- able.	Simple imprisonment for 1 month or fine of 500 rupees, or both.	Any Magistrate.
Ditto ...	Ditto ...	Imprisonment of either description for 1 year or fine of 1,000 rupees, or both.	Presidency Ma- gistrate or Ma- gistrate of the first or second class.
Ditto ...	Not com- poundable.	Imprisonment of either description for 2 years or fine, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first or second class.

CHAPTER XVI.—OFFENCES AFFECTING
Of Wrongful Restraint and

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
345	Keeping any person in wrongful confinement knowing that a writ has been issued for his liberation.	Shall not arrest without warrant.	Summons...
346	Wrongful confinement in secret ...	May arrest without warrant.	Ditto ...
347	Wrongful confinement for the purpose of extorting property or constraining to an illegal act, &c.	Ditto ...	Ditto ...
348	Wrongful confinement for the purpose of extorting confession or information, or of compelling restoration of property, &c.	Ditto ...	Ditto ...

Of Criminal Force

352	Assault or use of criminal force otherwise than on grave provocation.	Shall not arrest without warrant.	Summons...
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THE HUMAN BODY.—(*Continued.*)*Wrongful Confinement.*—(*Continued*)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not com- poundable	Imprisonment of either description for 2 years in addition to imprison- ment under any other section.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first or second class
Ditto ...	Ditto ...	Ditto ...	Ditto
Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.
Ditto ...	Ditto ...	Ditto ...	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.

and Assault.

Bailable ...	Compound- able.	Imprisonment of either description for 3 months or fine of 500 rupees, or both.	Any Magistrate.
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CHAPTER XVI.—OFFENCES AFFECTING

Of Criminal Force

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily be issued in the first instance.
353	Assault or use of criminal force to deter a public servant from discharge of his duty.	May arrest without warrant.	Warrant ...
354	Assault or use of criminal force to a woman with intent to outrage her modesty.	Ditto ...	Ditto ...
355	Assault or criminal force with intent to dishonour a person otherwise than on grave and sudden provocation.	Shall not arrest without warrant.	Summons...
356	Assault or criminal force in attempt to commit theft of property worn or carried by a person.	May arrest without warrant.	Warrant ...
357	Assault or use of criminal force in attempt wrongfully to confine a person.	Ditto ...	Ditto ...
358	Assault or use of criminal force on grave and sudden provocation.	Shall not arrest without warrant.	Summons...

THE HUMAN BODY.—(*Continued.*)*and Assault.*—(*Continued.*)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code	By what Court triable.
Bailable ...	Not com- poundable.	Imprisonment of either description for 2 years or fine, or both.	Presidency Ma- gistrate or Ma- gistrate of the first or second class.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Compound- able.	Ditto ...	Ditto. •
Not bailable.	Not com- poundable.	Ditto ...	Any Magistrate.
Bailable ...	Ditto ...	Imprisonment of either description for 1 year or fine of 1,000 rupees, or both.	Ditto.
Ditto ...	Compound- able.	Simple imprisonment for 1 month or fine of 200 rupees, or both.	Ditto.

CHAPTER XVI.—OFFENCES AFFECTING

(of Kidnapping, Abduction,

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
363	Kidnapping ...	May arrest without warrant.	Warrant ...
364	Kidnapping or abducting in order to murder.	Ditto ...	Ditto ...
365	Kidnapping or abducting with intent secretly and wrongfully to confine a person.	Ditto ...	Ditto ...
366	Kidnapping or abducting a woman to compel her marriage, or to cause her defilement, &c.	Ditto ...	Ditto ...
367	Kidnapping or abducting in order to subject a person to grievous hurt slavery, &c.	Ditto ...	Ditto ...
368	Concealing or keeping in confinement a kidnapped person.	Ditto ...	Ditto ...
369	Kidnapping or abducting a child with intent to take property from the person of such child.	Ditto ...	Ditto ...

THE HUMAN BODY.—(*Continued.*)*Slavery, and Forced Labour.*

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Not bailable.	Not com- poundable.	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Transportation for life, or rigorous imprison- ment for 10 years and fine.	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Court of Session.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Punishment for kidnap- ing or abduction.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.

CHAPTER XVI.—OFFENCES AFFECTING
Of Kidnapping, Abduction, Slavery,

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
370	Buying or disposing of any person as a slave.	Shall not arrest without warrant	Warrant ...
371	Habitual dealing in slaves.	May arrest without warrant.	Ditto ...
372	Selling or letting to hire a minor for purposes of prostitution, &c.	Ditto ...	Ditto ...
373	Buying or obtaining possession of a minor for the same purposes.	Ditto ...	Ditto ...
374	Unlawful compulsory labour.	Ditto ...	Ditto ...

Of

376 Rape— If the sexual intercourse was by a man with his own wife.	Shall not arrest without warrant.	Summons...
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THE HUMAN BODY.—(*Continued.*)*and Forced Labour.*—(Continued.)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code •	By what Court triable.
Bailable ...	Not c o m- poundable.	Imprisonment of either description for 7 years and fine.	Court of Session.
Not bailable.	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Bailable ...	Compound- able.	Imprisonment of either description for 1 year or fine, or both.	Any Magistrate.

Rape.

Bailable ...	Not c o m- poundable.	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.
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CHAPTER XVI.—OFFENCES AFFECTING

Of Rape

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
376 <i>ctd.</i>	In any other case ...	May arrest without warrant.	Warrant ...

Of Unnatural

377	Unnatural offences ...	May arrest without warrant.	Warrant ...
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CHAPTER XVII.—OFFENCES

Of

379	Theft ...	May arrest without warrant.	Warrant ...
380	Theft in a building, tent, or vessel ...	Ditto ...	Ditto ...

THE HUMAN BODY.—(*Concluded.*)

—(Continued.)

5	6	7	8
Whether bailable or not	Whether compound- able or not	Punishment under the Indian Penal Code.	By what Court triable.
Not bailable	Not com- poundable.	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.

Offences.

Not bailable	Not com- poundable.	Transportation for life, or imprisonment of either description for 10 years and fine	Court of Session Presidency Ma- gistrate, or Ma- gistrate of the first class.
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AGAINST PROPERTY.

Theft.

Not bailable	Not com- poundable.	Imprisonment of either description for 3 years or fine, or both.	Any Magistrate.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.

CHAPTER XVII.—OFFENCES

Of Theft

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
381	Theft by clerk or servant of property in possession of master or employer.	May arrest without warrant.	Warrant ...
382	Theft, preparation having been made for causing death, or hurt, or restraint, or fear of death or of hurt, or of restraint in order to the committing of such theft or to retiring after committing it, or to retaining property taken by it.	Ditto ...	Ditto ...

384	Extortion ...	Shall not arrest without warrant.	Warrant ...
385	Putting or attempting to put in fear of injury in order to commit extortion.	Ditto ...	Ditto ...
386	Extortion by putting a person in fear of death or grievous hurt	Ditto ...	Ditto ...

AGAINST PROPERTY.—(*Continued.*)—(*Continued.*)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Not bailable.	Not com- poundable.	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first or second class.
Ditto ...	Ditto ...	Rigorous imprisonment for 10 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.

Extortion.

Bailable ...	Not com- poundable.	Imprisonment of either description for 3 years or fine, or both.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years or fine, or both.	Ditto.
Not bailable.	Ditto ...	Imprisonment of either description for 10 years and fine.	Court of Session.

CHAPTER XVII.—OFFENCES

Of Extortion

1	2	3	4
SECTION.	OFFENCE.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
387	Putting or attempting to put a person in fear of death or grievous hurt in order to commit extortion.	Shall not arrest without warrant.	Warrant ...
388	Extortion by threat of accusation of an offence punishable with death, transportation for life, or imprisonment for 10 years.	Ditto ...	Ditto ...
	If the offence threatened be an unnatural offence.	Ditto ...	Ditto ...
389	Putting a person in fear of accusation of offence punishable with death, transportation for life, or with imprisonment for 10 years in order to commit extortion.	Ditto ...	Ditto ...
	If the offence be an unnatural offence ...	Ditto ...	Ditto ...

Of Robbery

392	Robbery ...	May arrest without warrant.	Warrant ...
	If committed on the highway between sunset and sunrise.	Ditto ...	Ditto ...

AGAINST PROPERTY.—(*Continued.*)

—(Continued.)

5	6	7	8
Whether bailable or not	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Not bailable.	Not com- poundable.	Imprisonment of either description for 7 years and fine.	Court of Session.
Bailable ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto
Ditto ...	Ditto ...	Transportation for life ...	Ditto
Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto
Ditto ...	Ditto ...	Transportation for life ...	Ditto

and Dacoity.

Not Bailable.	Not com- poundable.	Rigorous imprisonment for 10 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Rigorous imprisonment for 14 years and fine.	Ditto.

CHAPTER XVII.—OFFENCES

Of robbery and

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
393	Attempt to commit robbery ...	May arrest without warrant.	Warrant ...
394	Person voluntarily causing hurt in committing or attempting to commit robbery, or any other person jointly concerned in such robbery.	Ditto ...	Ditto ...
395	Dacoity ...	Ditto ...	Ditto ...
396	Murder in dacoity ...	Ditto ...	Ditto ...
397	Robbery or dacoity with attempt to cause death or grievous hurt.	Ditto ...	Ditto ...
398	Attempt to commit robbery or dacoity when armed with deadly weapon.	Ditto ...	Ditto ...
399	Making preparation to commit dacoity ...	Ditto ...	Ditto ...
400	Belonging to a gang of persons associated for the purpose of habitually committing dacoity.	Ditto ...	Ditto ...
401	Belonging to a wandering gang of persons associated for the purpose of habitually committing thefts.	Ditto ...	Ditto ...

AGAINST PROPERTY.—(*Continued.*)*Dacoity.*—(*Continued.*)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Not bailable.	Not com- poundable.	Rigorous imprisonment for 7 years and fine.	Court of Ses- sion, Presidency Magistrate, or Magistrate of the first class.
Ditto ...	Ditto ...	Transportation for life, or rigorous imprisonment for 10 years and fine.	Ditto.
Ditto ...	Ditto ...	Ditto ...	Court of Session.
Ditto ...	Ditto ...	Death, transportation for life, or rigorous impri- sonment for 10 years and fine.	Ditto.
Ditto ...	Ditto ...	Rigorous imprisonment for not less than 7 years.	Ditto.
Ditto ...	Ditto ...	Ditto . . .	Ditto.
Ditto ...	Ditto ...	Rigorous imprisonment for 10 years and fine.	Ditto.
Ditto ...	Ditto ...	Transportation for life, or rigorous imprisonment for 10 years and fine.	Ditto.
Ditto ...	Ditto ...	Rigorous imprisonment for 7 years and fine.	Court of Session Presidency Ma- gistrate, or Ma- gistrate of the first class.

CHAPTER XVII.—OFFENCES

Of Robbery and

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
402	Being one of five or more persons assembled for the purpose of committing dacoity	May arrest without warrant.	Warrant ...

Of Criminal Misappro-

403	Dishonest misappropriation of moveable property, or converting it to one's own use.	Shall not arrest without warrant.	Warrant ...
404	Dishonest misappropriation of property, knowing that it was in possession of a deceased person at his death, and that it has not since been in the possession of any person legally entitled to it.	Ditto ...	Ditto ...
405	If by clerk or person employed by deceased.	Ditto ...	Ditto ...

Of Criminal

406	Criminal breach of trust.	May arrest without warrant.	Warrant ...
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AGAINST PROPERTY.—(*Continued*.)*Dacoity.*—(Continued.)

5	6	7	8
Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
Not bailable.	Not compoundable.	Rigorous imprisonment for 7 years and fine.	Court of Session.

Robbery of Property.

Bailable ...	Not compoundable.	Imprisonment of either description for 2 years or fine, or both.	Any Magistrate.
Ditto	Ditto	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.
Ditto	Ditto	Imprisonment of either description for 7 years and fine.	Ditto.

Breach of Trust.

Not bailable.	Not compoundable	Imprisonment of either description for 3 years or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.
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CHAPTER XVII.—OFFENCES

Of Criminal Breach

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
407	Criminal breach of trust by a carrier, wharfinger, &c.	May arrest without warrant.	Warrant ...
408	Criminal breach of trust by a clerk or servant.	Ditto ...	Ditto ...
409	Criminal breach of trust by public servant, or by banker, merchant or agent, &c.	Ditto ...	Ditto ...

Of the Receiving

411	Dishonestly receiving stolen property, knowing it to be stolen.	May arrest without warrant.	Warrant
412	Dishonestly receiving stolen property, knowing that it was obtained by dacoity.	Ditto	Ditto

AGAINST PROPERTY.—(*Continued*).*of Trust.*—(Continued.)

		7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code. •	By what Court triable.
Not bailable	Not com- poundable.	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
Ditto	Ditto	Ditto ...	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first or second class.
Ditto	Ditto	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.

of Stolen Property.

Not bailable.	Not com- poundable.	Imprisonment of either description for 3 years and fine, or both.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first or second class.
Ditto ...	Ditto ...	Transportation for life, or rigorous imprisonment for 10 years and fine.	Court of Session.

CHAPTER XVII.— OFFENCES

Of the Receiving of

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not	Whether a warrant or a summons shall ordinarily issue in the first instance.
413	Habitually dealing in stolen property ...	May arrest without warrant.	Warrant ...
414	Assisting in concealment or disposal of stolen property, knowing it to be stolen	Ditto ...	Ditto ...

Of

417	Cheating ...	Shall not arrest without warrant.	Warrant ..
418	Cheating a person whose interest the offender was bound either by law or by legal contract, to protect.	Ditto ...	Ditto ...
419	Cheating by personation ...	May arrest without warrant.	Ditto ...

AGAINST PROPERTY.—(*Continued.*)*Stolen Property.*—(*Continued.*)

5	6	7	8
Whether bailable or not.	Whether compound- able or not	Punishment under the Indian Penal Code.	By what Court triable.
Not bailable	Not com- poundable.	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years or fine, or both.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first or second class.

Cheating.

Bailable ...	Not com- poundable.	Imprisonment of either description for 1 year or fine or both.	Presidency Ma- gistrate or Ma- gistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years or fine, or both.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first or second class.
Ditto ...	Ditto ...	Ditto ...	Ditto.

CHAPTER XVII.—OFFENCES

Of Cheating

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
420	Cheating, and thereby dishonestly inducing delivery of property or the making, alteration, or destruction of a valuable security.	May arrest without warrant.	Warrant ...

(f) Fraudulent Deeds and

421	Fraudulent removal or concealment of property, &c.. to prevent distribution among creditors.	Shall not arrest without warrant.	Warrant ...
422	Fraudulently preventing from being made available for his creditors a debt or demand due to the offender.	Ditto ...	Ditto ...
423	Fraudulent execution of deed of transfer containing a false statement of consideration.	Ditto ...	Ditto ...
424	Fraudulent removal or concealment of property, of himself or any other person, or assisting in the doing thereof, or dishonestly releasing any demand or claim to which he is entitled.	Ditto ...	Ditto ...

AGAINST PROPERTY.—(*Continued.*)—(*Continued.*)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not com- poundable.	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.

Disposition of Property.

Bailable ...	Not com- poundable.	Imprisonment of either description for 2 years or fine, or both.	Presidency Ma- gistrate or Ma- gistrate of the first or second class.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Ditto ...	Ditto.

CHAPTER XVII.—OFFENCES

Of

1	2	3	4
SECTION	OFFENCE.	Whether the police may arrest without warrant or not	Whether a warrant or a summons shall ordinarily issue in the first instance.
426	Mischief ...	Shall not arrest without warrant.	Summons...
427	Mischief, and thereby causing damage to the amount of 50 rupees or upwards.	Ditto ...	Warrant ...
428	Mischief by killing, poisoning, maiming, or rendering useless any animal of the value of 10 rupees or upwards	May arrest without warrant	Ditto ...
429	Mischief by killing, poisoning, maiming, or rendering useless any elephant camel horse, &c., whatever may be its value, or any other animal of the value of 50 rupees or upwards.	Ditto ...	Ditto ...
430	Mischief by causing diminution of supply of water for agricultural purposes. &c.	Ditto ...	Ditto ...

AGAINST PROPERTY.—(*Continued.*)*Mischief.*

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Compound- able when the only loss or damage caused is loss or damage to a private person.	Imprisonment of either description for 3 months or fine, or both.	Any Magistrate.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years or fine or both.	Presidency Ma- gistrate or Ma- gistrate of the first or second class.
Ditto ...	Not com- poundable	Ditto ...	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 5 years or fine, or both.	Court of Session, Presidency Ma- gistrate or Ma- gistrate of the first or second class.
Ditto ...	Ditto ...	Ditto ...	Ditto.

CHAPTER XVII.—OFFENCES

Of Mischief

1	2	3	4
SECTION.	' OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
431	Mischief by injury to public road, bridge, navigable river, or navigable channel, and rendering it impassable or less safe for travelling or conveying property.	May arrest without warrant.	Warrant ...
432	Mischief by causing inundation or obstruction to public drainage attended with damage.	Ditto ...	Ditto ...
433	Mischief by destroying or moving or rendering less useful a light-house or sea-mark, or by exhibiting false lights.	Ditto ...	Ditto ...
434	Mischief by destroying or moving, &c., a land-mark fixed by public authority.	Shall not arrest without warrant.	Ditto ...
435	Mischief by fire or explosive substance with intent to cause damage to amount of 100 rupees or upwards, or, in case of agricultural produce, 10 rupees or upwards.	May arrest without warrant.	Ditto ...
436	Mischief by fire or explosive substance with intent to destroy a house, &c.	Ditto ...	Ditto ...

AGAINST PROPERTY.—(*Continued.*)

—(Continued.)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not com- poundable.	Imprisonment of either description for 5 years or fine, or both.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first or second class.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years or fine, or both.	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either description for 1 year or fine, or both.	Presidency Ma- gistrate, or Ma- gistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
Not bailable.	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.

CHAPTER XVII.—OFFENCES

Of Mischief

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
437	Mischief with intent to destroy or make unsafe a decked vessel or a vessel of 20-ton burden.	May arrest without warrant.	Warrant ...
438	The mischief described in the last section when committed by fire or any explosive substance.	Ditto ...	Ditto.
439	Running vessel ashore with intent to commit theft, &c.	Ditto ...	Ditto ...
440	Mischief committed after preparation made for causing death, or hurt, &c.	Ditto ...	Ditto ...

Of Criminal

447	Criminal trespass	... May arrest without warrant	Summons...
448	House-trespass	... Ditto.	Warrant ...

AGAINST PROPERTY.—(*Continued*)

—(Concluded.)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Not bailable	Not com- poundable.	Imprisonment of either description for 10 years and fine.	Court of Session.
Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 5 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.

Trespass.

Bailable ...	Compound- able.	Imprisonment of either description for 3 months or fine of 500 rupees, or both.	Any Magistrate.
Ditto ...	Ditto ...	Imprisonment of either description for 1 year or fine of 1,000 rupees, or both.	Ditto.

CHAPTER XVII.—OFFENCES

Of Criminal Trespass

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
449	House-trespass in order to the commission of an offence punishable with death.	May arrest without warrant.	Warrant ...
450	House-trespass in order to the commission of an offence punishable with transportation for life.	Ditto ...	Ditto ...
451	House-trespass in order to the commission of an offence punishable with imprisonment.	Ditto ...	Ditto ...
	If the offence is theft ...	Ditto ...	Ditto ...
452	House-trespass, having made preparation for causing hurt, assault, &c.	Ditto ...	Ditto ...
453	Lurking house-trespass or house-breaking.	Ditto ...	Ditto ...

AGAINST PROPERTY.—(*Continued.*)

—(Continued.)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Not bailable.	Not com- poundable.	Transportation for life, or rigorous imprisonment for 10 years and fine.	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
Bailable ...	Ditto ...	Imprisonment of either description for 2 years and fine.	Any Magistrate.
Not bailable.	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first or second class.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years and fine.	Presidency Ma- gistrate or Ma- gistrate of the first or second class.

CHAPTER XVII.—OFFENCES

Of Criminal Trespass

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance
454	Lurking house-trespass or house-breaking in order to the commission of an offence punishable with imprisonment.	May arrest without warrant.	Warrant ...
	If the offence is theft.	Ditto ...	Ditto ...
455	Lurking house-trespass or house-breaking after preparation made for causing hurt, assault, &c.	Ditto ...	Ditto ...
456	Lurking house-trespass or house-breaking by night.	Ditto ...	Ditto ...
457	Lurking house-trespass or house-breaking by night in order to the commission of an offence punishable with imprisonment.	Ditto ...	Ditto ...

AGAINST PROPERTY.—(*Continued*),

—(Continued.)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Not bailable	Not com- poundable.	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
Ditto ...	Ditto ...	Ditto ...	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 5 years and fine.	Ditto.

CHAPTER XVII.—OFFENCES

Of Criminal Trespass.

1	2	3	4
SECTION.	OFFENCE	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
457 <i>ctd.</i>	If the offence is theft ...	May arrest without warrant.	Warrant ...
458	Lurking house trespass or house-breaking by night, after preparation made for causing hurt, &c.	Ditto ...	Ditto ...
459	Grievous hurt caused whilst committing lurking house-trespass or house-breaking.	Ditto ...	Ditto ...
460	Death or grievous hurt caused by one of several persons jointly concerned in house-breaking by night, &c.	Ditto ...	Ditto ...
461	Dishonestly breaking open or unfastening any closed receptacle containing or supposed to contain property.	Ditto ...	Ditto ...
462	Being entrusted with any closed receptacle containing or supposed to contain any property, and fraudulently opening the same.	Ditto ...	Ditto ...

AGAINST PROPERTY.—(*Concluded.*)—(*Concluded.*)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Not bailable.	Not com- poundable.	Imprisonment of either description for 14 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first or second class.
Ditto ...	Ditto ...	Ditto ...	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years or fine, or both.	Presidency Ma- gistrate or Ma- gistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years or fine, or both.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first or second class.

CHAPTER XVIII.—OFFENCES RELATING TO DOCUMENTS,

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
465	Forgery ...	Shall not arrest without warrant.	Warrant ...
466	Forgery of a record of a Court of Justice or of a Register of Births, &c., kept by a public servant.	Ditto ...	Ditto ...
467	Forgery of a valuable security, will, or authority to make or transfer any valuable security, or to receive any money, &c.	Ditto ...	Ditto ...
	When the valuable security is a promissory note of the Government of India.	May arrest without warrant.	Ditto ...
468	Forgery for the purpose of cheating ...	Shall not arrest without warrant.	Ditto ...
469	Forgery for the purpose of harming the reputation of any person, or knowing that it is likely to be used for that purpose.	Ditto ...	Ditto ...
471	Using as genuine a forged document which is known to be forged.	Ditto ...	Ditto ...

AND TO TRADE OR PROPERTY MARKS.

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not com- poundable.	Imprisonment of either description for 2 years or fine, or both.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
Not bailable	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session,
Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
Ditto ...	Ditto ...	Ditto ...	Ditto?
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
Bailable ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.
Ditto ...	Ditto ...	Punishment for forgery of such document.	Same Court as that by which the forgery is triable.

CHAPTER XVIII.—OFFENCES RELATING TO DOCUMENTS,

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
471 <i>ctd.</i>	When the forged document is a promissory note of the Government of India.	May arrest without warrant.	Warrant ...
472	Making or counterfeiting a seal, plate, &c., with intent to commit a forgery punishable under section 467 of the Indian Penal Code, or possessing with like intent any such seal, plate, &c., knowing the same to be counterfeited.	Shall not arrest without warrant.	Ditto ...
473	Making or counterfeiting a seal, plate, &c., with intent to commit a forgery punishable otherwise than under section 467 of the Indian Penal Code, or possessing with like intent any such seal, plate, &c., knowing the same to be counterfeited.	Ditto ...	Ditto ...
474	Having possession of a document, knowing it to be forged, with intent to use it as genuine; if the document is one of the description mentioned in section 466 of the Indian Penal Code.	Ditto ...	Ditto ...
	If the document is one of the description mentioned in section 467 of the Indian Penal Code.	Ditto ...	Ditto ...

AND TO TRADE OR PROPERTY MARKS.—(Continued.)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not com- poundable.	Punishment for forgery of such documents.	Court of Session.
Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 7 years and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 7 years and fine.	Ditto.

CHAPTER XVIII.—OFFENCES RELATING TO DOCUMENTS,

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily be issued in the first instance.
475	Counterfeiting a device or mark used for authenticating documents described in section 467 of the Indian Penal Code, or possessing counterfeit-marked material.	Shall not arrest without warrant.	Warrant ...
476	Counterfeiting a device or mark used for authenticating documents other than those described in section 467 of the Indian Penal Code, or possessing counterfeit-marked material.	Ditto ...	Ditto ...
477	Fraudulently destroying or defacing, or attempting to destroy or deface, or secreting, a will, &c.	Ditto ...	Ditto ...
477A	Falsification of accounts. ...	Ditto ...	Ditto ...
			<i>Of Trade and</i>
482	Using a false trade or property-mark with intent to deceive or injure any person.	Shall not arrest without warrant.	Warrant
483	Counterfeiting a trade or property-mark used by another with intent to cause damage or injury.	Ditto ...	Ditto

AND TO TRADE OR PROPERTY MARKS.—(*Continued.*)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not com- poundable.	Transportation for life, or imprisonment of either description for 7 years and fine.	Court of Session.
Not bailable.	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
Ditto ...	Ditto ...	Transportation for life or imprisonment of either description for 7 years and fine.	Ditto.
Ditto ...	Ditto ...	Ditto ...	Ditto.

Property Marks.

Bailable ...	Not com- poundable.	Imprisonment of either description for 1 year and fine, or both.	Presidency Ma- gistrate or Ma- gistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years and fine, or both.	Ditto.

CHAPTER XVIII.—OFFENCES RELATING TO DOCUMENTS,

Of Trade and

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
484	Counterfeiting a property-mark used by a public servant, or any mark used by him to denote the manufacture, quality, &c., of any property.	Shall not arrest without warrant.	Summons...
485	Fraudulently making or having possession of any die, plate, or other instrument for counterfeiting any public or private property or trade-mark.	Ditto ...	Ditto ...
486	Knowingly selling goods marked with a counterfeit property or trade-mark.	Ditto ...	Ditto ...
487	Fraudulently making a false mark upon any package or receptacle containing goods with intent to cause it to be believed that it contains goods which it does not contain, &c.	Ditto ...	Ditto ...
488	Making use of any such false mark ...	Ditto ...	Ditto ...
489	Removing, destroying, or defacing any property-mark with intent to cause injury.	Ditto ...	Ditto ...

AND TO TRADE OR PROPERTY MARKS.—(*Continued.*)*Property Marks.*—(*Continued.*)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code. ¹	By what Court triable.
Bailable ...	Not com- poundable	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years or fine, or both.	Ditto
Ditto ...	Ditto ...	Imprisonment of either description for 1 year or fine, or both.	Presidency Magis- trate or Magis- trate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years or fine, or both.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first or second class.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 1 year or fine, or both.	Presidency Ma- gistrate or Ma- gistrate of the first or second class.

CHAPTER XVIII.—OFFENCES RELATING TO DOCUMENTS

Of Currency-notes

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
489A	*Counterfeiting currency-notes or bank-notes.	May arrest without warrant	Warrant ...
489B	Using as genuine forged or counterfeit currency-notes or bank-notes.	Ditto ...	Ditto ...
489C	Possession of forged or counterfeit currency-notes or bank-notes.	Ditto ...	Ditto ...
489D	Making or possessing instruments or materials for forging or counterfeiting currency-notes or bank-notes.	Ditto ...	Ditto ...

CHAPTER XIX.—CRIMINAL

490	Being bound by contract to render personal service during a voyage or journey, or to convey or guard any property or person, and voluntarily omitting to do so.	Shall not arrest without warrant.	Summons...
491	Being bound to attend or supply the wants of a person who is helpless from youth, unsoundness of mind, or disease, and voluntarily omitting to do so.	Ditto ...	Ditto ...

* Items 489A to 489D have been added by the

AND TO TRADE OR PROPERTY MARKS.—(*Concluded.*)*and Bank-notes.*

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code. •	By what Court triable.
Not bailable.	Not com- poundable.	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Bailable ...	Ditto ...	Imprisonment of either description for 7 years or fine, or both.	Ditto.
Not bailable.	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine	Ditto.

BREACH OF CONTRACTS OF SERVICE.

Bailable ...	Compound- able.	Imprisonment of either description for 1 month or fine of 100 rupees, or both.	Presidency Magis- trate or Magis- trate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either de-cription for 3 months or fine of 200 rupees, or both.	Ditto.

Currency Notes Forgery Act (XII of 1899), s. 3.

CHAPTER XIX.—CRIMINAL BREACH

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
492	Being bound by contract to render personal service for a certain period at a distant place to which the employee is conveyed at the expense of the employer, and voluntarily deserting the service, or refusing to perform the duty.	Shall not arrest without warrant.	Summons...

CHAPTER XX.—OFFENCES

493	A man by deceit causing a woman not lawfully married to him to believe that she is lawfully married to him, and to cohabit with him in that belief.	Shall not arrest without warrant.	Warrant ...
494	Marrying again during the lifetime of a husband or wife.	Ditto ...	Ditto ...
495	Same offence with concealment of the former marriage from the person with whom subsequent marriage is contracted.	Ditto ...	Ditto ...
496	A person with fraudulent intention going through the ceremony of being married, knowing that he is not thereby lawfully married.	Ditto ...	Ditto ...
497	Adultery ...	Ditto ...	Ditto ...

OF CONTRACTS OF SERVICE.—(*Continued.*)

5	6	7	8
Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Compoundable.	Imprisonment of either description for 1 month or fine of double the expense incurred, or both.	Presidency Magistrate or Magistrate of the first or second class.

RELATING TO MARRIAGE.

Not bailable.	Not compoundable.	Imprisonment of either description for 10 years and fine.	Court of Session.
Bailable ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
Not bailable.	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
Bailable ...	Compoundable.	Imprisonment of either description for 5 years or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first class.

CHAPTER XX.—OFFENCES

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
498	Enticing or taking away, or detaining with a criminal intent, a married woman.	Shall not arrest without warrant.	Warrant ...

CHAPTER XXI.

500	Defamation ...	Shall not arrest without warrant.	Warrant ...
501	Printing or engraving matter, knowing it to be defamatory.	Ditto ...	Ditto ...
502	Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter.	Ditto ...	Ditto ...

CHAPTER XXII.—CRIMINAL INTIMIDATION

504	Insult intended to provoke a breach of the peace.	Shall not arrest without warrant.	Warrant ...
505	False statement, rumour, &c., circulated with intent to cause mutiny or offence against the public peace.	Ditto ...	Ditto ...
506	Criminal intimidation ...	Ditto ...	Ditto ...
	If threat be to cause death or grievous hurt, &c.	Ditto ...	Ditto ...

RELATING TO MARRIAGE.—(*Continued.*)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Compound- able.	Imprisonment of either description for 2 years or fine, or both.	Presidency Magis- trate or Magis- trate of the first or second class.

—DEFAMATION.

Bailable ...	Compound- able.	Simple imprisonment for 2 years or fine, or both.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Ditto ...	Ditto.

INSULT, AND ANNOYANCE.

Bailable ...	Compound- able.	Imprisonment of either description for 2 years or fine, or both.	Any Magistrate.
Not bailable.	Not com- poundable.	Ditto ...	Presidency Ma- gistrate or Ma- gistrate of the first class.
Bailable ...	Compound- able.	Ditto ...	Ditto.
Ditto ...	Not com- poundable.	Imprisonment of either description for 7 years or fine, or both.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.

CHAPTER XXII.—CRIMINAL INTIMIDATION

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
507	Criminal intimidation by anonymous communication, or having taken precaution to conceal whence the threat comes.	Shall not arrest without warrant.	Warrant ...
508	Act caused by inducing a person to believe that he will be rendered an object of Divine displeasure.	Ditto ...	Ditto ...
509	Uttering any word or making any gesture intended to insult the modesty of a woman, &c.	Ditto ...	Ditto ...
510	Appearing in a public place, &c., in a state of intoxication, and causing annoyance to any person.	Ditto ...	Ditto ...

CHAPTER XXIII.—ATTEMPTS

511	Attempting to commit offences punishable with transportation or imprisonment, and in such attempt doing any act towards the commission of the offence.	According as the offence is one in respect of which the police may arrest without warrant or not.	According as the offence is one in respect of which a summons or warrant shall ordinarily issue.
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INSULT, AND ANNOYANCE.—(*Continued.*)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not com- poundable.	Imprisonment of either description for 2 years in addition to the punish- ment under above section.	Court of Session Presidency Ma- gistrate, or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 1 year or fine, or both.	Presidency Magis- trate or Magis- trate of the first or second class.
Ditto ...	Ditto ...	Simple imprisonment for 1 year or fine, or both.	Presidency Ma- gistrate or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Simple imprisonment for 24 hours or fine of 10 rupees, or both.	Any Magistrate.

TO COMMIT OFFENCES.

According as the offence contemplat- ed by the offender is bailable or not.	Compound- able when the offence attempted is com- poundable.	Transportation or impri- sonment not exceeding half of the longest term, and of any description, provided for the offence, or fine, or both.	The Court by which the of- fence attempted is triable.
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OFFENCES AGAINST

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
	If punishable with death, transportation, or imprisonment for 7 years or upwards.	May arrest without warrant.	Warrant ...
	If punishable with imprisonment for 3 years and upwards, but less than seven.	Ditto ...	Ditto ...
	If punishable with imprisonment for one year and upwards, and less than 3 years.	Shall not arrest without warrant.	Summons...
	If punishable with imprisonment for less than one year, or with fine only.	Ditto ...	Ditto ...

OTHER LAWS.

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Act offended against.	By what Court triable.
Not bailable	Not com- poundable.		Court of Session.
Ditto (ex- cept in cases under the Indian Arms Act, 1878, sec- tion 19, which shall be bailable)	Ditto ...		Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
Bailable ...	Ditto ...		Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first or second class.
Ditto ...	Ditto ...		Any Magistrate.

SCHEDULE III.

(See section 36.)

ORDINARY POWERS OF PROVINCIAL MAGISTRATES.

I.—Ordinary Powers of a Magistrate of the Third Class.

- (1) Power to arrest, or direct the arrest of, and to commit to custody, a person committing an offence in his presence—section 64.
- (2) Power to arrest, or direct the arrest in his presence of, an offender—section 65.
- (3) Power to endorse a warrant, or to order the removal of an accused person arrested under a warrant—sections 83, 84, and 86.
- (4) Power to issue proclamations in cases judicially before him—section 87.
- (5) Power to attach and sell property in cases judicially before him—section 88.
- (6) Power to restore attached property—section 89.
- (7) Power to require search to be made for letters and telegrams—section 95.
- (8) Power to issue search warrant—section 96.
- (9) Power to endorse a search-warrant, and order delivery of thing found—section 99.
- (10) Power to command unlawful assembly to disperse—section 127.
- (11) Power to use civil force to disperse unlawful assembly—section 128.
- (12) Power to require military force to be used to disperse unlawful assembly—section 130.
- (13) Power to record statements or confessions during a police-investigation—section 164.
- (14) Power to authorize detention of a person during a police-investigation—section 167.
- (15) Power to detain an offender found in Court—section 351.
- (16) Power to take cognizance of offence, although committed by European British subject, and to issue process returnable before a Magistrate having jurisdiction—section 445.
- (17) Power to apply to District Magistrate to issue commission for examination of witness—section 506 (2).
- (18) Power to recover penalty on forfeited bond for appearance before Magistrate's Court—section 514.
- (19) Power to make order as to disposal of property—section 517.
- (20) Power to sell perishable property of a suspected character—section 525.

SCHEDULE II.—(*Continued.*)ORDINARY POWERS OF PROVINCIAL MAGISTRATES.—(*Contd.*)*II.—Ordinary Powers of a Magistrate of the Second Class.*

- (1) The ordinary powers of a Magistrate of the third class.
- (2) Power to order the police to investigate an offence in cases in which the Magistrate has jurisdiction to try or commit for trial—section 155.
- (3) Power to postpone issue of process—section 202.
- (4) Power to order destruction of libellous and other matter—section 521.

III.—Ordinary Powers of a Magistrate of the First Class.

- (1) The ordinary powers of a Magistrate of the second class.
- (2) Powers to issue search-warrant otherwise than in course of an inquiry—section 98.
- (3) Power to issue search-warrant for discovery of persons wrongfully confined—section 100.
- (4) Power to require security to keep the peace—section 107.
- (5) Power to require security for good behaviour—section 109.
- (6) Power to discharge sureties—section 126.
- (7) Power to make orders, &c., in possession-cases—sections 145, 146, and 147.
- (8) Power to commit for trial—section 206.
- (9) Power to stop proceedings when no complainant—section 249.
- (10) Power to make orders of maintenance—sections 488 and 489.
- (11) Power to take evidence on commission—section 503.
- (12) Power to recover penalty on forfeited bond—section 514.
- (13) Power to make order as to first offenders—section 562.

IV.—Ordinary Powers of a Sub-divisional Magistrate.

- (1) The ordinary powers of a Magistrate of the first class.
- (2) Power to direct warrants to landholders—section 78.
- (3) Power to require security for good behaviour—section 110.
- (4) Power to make order as to local nuisances—section 133.
- (5) Power to make orders prohibiting repetitions of nuisances—section 143.
- (6) Power to make orders under section 144.
- (7) Power to depute Subordinate Magistrate to make local inquiry—section 148.

SCHEDULE III.—(*Continued.*)ORDINARY POWERS OF PROVINCIAL MAGISTRATES.—(*Continued.*)*IV.—Ordinary Powers of a Sub-divisional Magistrate (continued).*

- (8) Power to order police-investigation into cognizable case—section 156.
- (9) Power to receive report of police-officer and pass order—section 173.
- (10) Power to hold inquests—section 174.
- (11) Power to issue process for person within local jurisdiction who has committed an offence outside the local jurisdiction—section 186.
- (12) Power to entertain complaints—section 190.
- (13) Power to receive police-reports—section 190.
- (14) Power to entertain cases without complaint—section 191.
- (15) Power to transfer cases to a Subordinate Magistrate—section 192.
- (16) Power to pass sentence on proceedings recorded by a subordinate Magistrate—section 349.
- (17) Power to forward record of inferior Court to District Magistrate—section 435. (2).
- (18) Power to sell property alleged or suspected to have been stolen, &c.—section 524.
- (19) Power to withdraw cases other than appeals, and to try or refer them for trial—section 528.
- (20) Power to order released convicts to notify residence—section 565.

*V.—Ordinary Powers of a District Magistrate.**

- (1) The ordinary powers of a Sub-divisional Magistrate.
- (2) Power to require delivery of letters, telegrams, &c.—section 95.
- (3) Power to issue search-warrant for documents in custody of postal or telegraph authorities—section 96.
- (4) Power to require security for good behaviour in case of sedition—section 108.
- (5) Power to discharge persons bound to keep the peace or to be of good behaviour—section 124.
- (6) Power to cancel bond for keeping the peace—section 125.
- (7) Power to try summarily—section 260.
- (8) Power to quash convictions in certain cases—section 350.

* Under the Punjab Frontier Crimes Regulation (IV. of 1887), the Additional District Magistrate shall have the powers specified in Part V.—See s. 5 (2) of the Regulation.

SCHEDULE III.—(*Concluded.*)ORDINARY POWERS OF PROVINCIAL MAGISTRATES.—(*Concluded.*)*V.—Ordinary Powers of a District Magistrate (continued).*

- (9) Power to hear appeals from orders requiring security for good behaviour—section 406.
 - (10) Power to hear or refer appeals from convictions by Magistrates of the second and third classes—section 407.
 - (11) Power to call for records—section 435.
 - (12) Power to order commitment—section 436.
 - (13) Power to order inquiry into complaint dismissed or case of accused discharged—section 437.
 - (14) Power to report case to High Court—section 438.
 - (15) Power to try European British subjects—section 443.
 - (16) Power to sentence European British subject to more than three months' imprisonment or one thousand rupees fine, or both—section 446.
 - (17) Power to appoint person to be public prosecutor in particular case—section 492 (2).
 - (18) Power to issue commission for examination of witness—sections 503, 506.
 - (19) Power to hear appeal from or revise orders passed under section 514—section 515.
 - (20) Power to compel restoration of abducted female—section 552.
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SCHEDULE IV.

*(See sections 37 and 38.)*ADDITIONAL POWERS WITH WHICH PROVINCIAL MAGISTRATES MAY
BE INVESTED.

POWERS WITH WHICH
A MAGISTRATE OF
THE FIRST CLASS
MAY BE INVESTED. } BY THE LO-
CAL GOV-
ERNMENT

- (1) Power to require security for good behaviour in case of sedition—section 108 :
- (2) Power to require security for good behaviour—section 110 :
- (3) Power to make orders as to local nuisances—section 133 :
- (4) Power to make orders prohibiting repetitions of nuisances—section 143 :
- (5) Power to make orders under section 144 :
- (6) Power to hold inquests—section 174 :
- (7) Power to issue process for person within local jurisdiction who has committed an offence outside the local jurisdiction—section 186 :
- (8) Power to take cognizance of offences upon complaint—section 190 :
- (9) Power to take cognizance of offences upon police-reports—section 190 :
- (10) Power to take cognizance of offences without complaint—section 190 :

ADDITIONAL POWERS WITH WHICH PROVINCIAL MAGISTRATES MAY BE INVESTED (*continued*).

POWERS WITH WHICH A MAGISTRATE OF THE FIRST CLASS MAY BE INVESTED.— (contd.)	BY THE LO- CAL GOV- ERNMENT —<i>ctd.</i>	(11) Power to try summarily —section 260 : (12) Power to hear appeals from convictions by Magistrates of the se- cond and third classes —section 407 : (13) Power to sell property alleged or suspected to have been stolen, &c.— section 524 : (14) Power to order released convicts to notify resi- dence—section 565 : (15) Power to try cases under section 124A of the Indian Penal Code.
POWERS WITH WHICH A MAGISTRATE OF THE FIRST CLASS MAY BE INVESTED.— (contd.)	BY THE DISTRICT MAGIS- TRATE.	(1) Power to make orders prohibiting repetitions of nuisances—section 143 : (2) Power to make orders under section 144 : (3) Power to hold inquests— section 174 : (4) Power to take cognizance of offences upon com- plaint—section 190 : (5) Power to take cognizance of offences upon police- reports—section 190 : (6) Power to transfer cases— section 192.

SCHEDULE IV.—(*Continued.*)

ADDITIONAL POWERS WITH WHICH PROVINCIAL MAGISTRATES MAY BE
INVESTED (*continued*).

POWERS WITH WHICH A MAGISTRATE OF THE SECOND CLASS MAY BE INVESTED.	BY THE LO- CAL GOV- ERNMENT.	(1)*
		(2) Power to make orders prohibiting repetitions of nuisances—section 143 :
		(3) Power to make orders under section 144 :
		(4) Power to hold inquests—section 174 :
		(5) Power to take cognizance of offences upon complaint—section 190 :
		(6) Power to take cognizance of offences upon police-reports—section 190 :
		(7) Power to take cognizance of offences without complaint—section 190 :
		(8) Power to commit for trial—section 206 :
		(9) Power to make order as to first offenders—section 562 :
	BY THE DISTRICT MAGIS- TRATE.	(1) Power to make orders prohibiting repetitions of nuisances—section 143 :
		(2) Power to make orders under section 144 :
		(3) Power to hold inquests—section 174 :
		(4) Power to take cognizance of offences upon complaint—section 190 :
		(5) Power to take cognizance of offences upon police-reports—section 190.

* Here the words and figures. "Power to pass sentences of whipping—section 32," are repealed by Act IV. of 1909, and therefore omitted.

SCHEDULE IV.—(Concluded.)

ADDITIONAL POWERS WITH WHICH PROVINCIAL MAGISTRATES MAY BE INVESTED (concluded.)

POWERS WITH WHICH A MAGISTRATE OF THE THIRD CLASS MAY BE INVESTED.	BY THE LO- CAL GOV- ERNMENT.	(1) Power to make orders prohibiting repetitions of nuisances—section 143: (2) Powers to make orders under section 144: (3) Power to hold inquests—section 174: (4) Power to take cognizance of offences upon complaint—section 190: (5) Power to take cognizance of offences upon police-reports—section 190; (6) Power to commit for trial—section 206.
	BY THE DISTRICT MAGIS- TRATE.	(1) Power to make orders prohibiting repetitions of nuisances—section 143: (2) Power to make orders under section 144: (3) Power to hold inquests—section 174: (4) Power to take cognizance of offences upon complaint—section 190: (5) Power to take cognizance of offences upon police-reports—section 190.

POWERS WITH WHICH A SUB-DIVISIONAL MAGISTRATE MAY BE INVESTED.	BY THE LO- CAL GOV- ERNMENT.	Power to call for records—section 435.
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SCHEDULE V.

(See section 554.)

FORMS.

I.—SUMMONS TO AN ACCUSED PERSON.

(See section 68.)

To _____ of _____.

WHEREAS your attendance is necessary to answer to a charge of (*state shortly the offence charged*), you are hereby required to appear in person (*or by pleader, as the case may be*) before the (*Magistrate*) of _____, on the _____ day of _____. Herein fail not.

Dated this _____ day of _____, 19 ____.

(Seal.)

(Signature.)

II.—WARRANT OF ARREST.

(See section 75.)

To [*name and designation of the person or persons who is or are to execute the warrant*].

WHEREAS _____ of _____ stands charged with the offence of (*state the offence*), you are hereby directed to arrest the said _____, and to produce him before me. Herein fail not.

Dated this _____ day of _____, 19 ____.

(Seal.)

(Signature.)

(See section 76.)

This warrant may be endorsed as follows :—

If the said _____ shall give bail himself in the sum of _____, with one surety in the sum of _____ (*or two sureties, each in the sum of _____*) to attend before me on the _____ day of _____, and to continue so to attend until otherwise directed by me, he may be released.

Dated this _____ day of _____, 19 ____.

(Signature.)

III.—BOND AND BAIL-BOND AFTER ARREST UNDER A WARRANT.

(See section 86.)

I (*name*), of _____, being brought before the District Magistrate of _____ (*or as the case may be*) under a warrant issued to compel my appearance to answer to the charge of _____, do hereby bind myself to

SCHEDULE V.—(*Continued.*)FORMS (*continued.*)

attend in the Court of _____ on the _____ day of _____ next,
to answer to the said charge, and to continue so to attend until otherwise
directed by the Court ; and, in case of my making default herein, I bind my-
self to forfeit to Her Majesty the Queen, Empress of India, the sum of
Rupees _____ ,

Dated this _____ day of _____ , 19 ____ .

(*Signature.*)

I do hereby declare myself surety for the above-named _____ of
_____, that he shall attend before _____ in the Court of _____ on
the _____ day of _____ next to answer to the charge on which he has been
arrested, and shall continue so to attend until otherwise directed by the
Court ; and, in case of his making default therein, I bind myself to forfeit
to Her Majesty the Queen, Empress of India, the sum of Rupees _____ .

Dated this _____ day of _____ , 19 ____ .

(*Signature*)

IV.—PROCLAMATION REQUIRING THE APPEARANCE OF A PERSON ACCUSED.

(*See section 87.*)

WHEREAS complaint has been made before me that (*name, description,
and address*) has committed (*or is suspected to have committed*) the offence
of _____, punishable under section _____ of the Indian Penal Code, and it
has been returned to a warrant of arrest thereupon issued that the said
(*name*) cannot be found, and whereas it has been shown to my satisfaction
that the said (*name*) has absconded (*or is concealing himself to avoid the
service of the said warrant*) :

Proclamation is hereby made that the said _____ of _____ is required
to appear at (*place*) before this Court (*or before me*) to answer the said com-
plaint within _____ days from this date. _____ ,

Dated this _____ day of _____ , 19 ____ .

(*Seal.*)

(*Signature.*)

V.—PROCLAMATION REQUIRING THE ATTENDANCE OF A WITNESS.

(*See section 87.*)

WHEREAS complaint has been made before me that (*name, description
and address*) has committed (*or is suspected to have committed*) the offence
of (*mention the offence concisely*), and a warrant has been issued to compel

SCHEDULE V.—(*Continued.*)FORMS (*continued.*)

the attendance of (*name, description, and address of the witness*) before this Court to be examined touching the matter of the said complaint; and whereas it has been returned to the said warrant that the said (*name of witness*) cannot be found, and it has been shown to my satisfaction that he has absconded (*or is concealing himself to avoid the service of the said warrant*):

Proclamation is hereby made that the said (*name*) is required to appear at (*place*) before the Court of _____ on the _____ day of _____ next at _____ o'clock, to be examined touching _____, the offence complained of.

Dated this _____ day of _____, 19 ____.

(*Seal*)

(*Signature*)

VI.—ORDER OF ATTACHMENT TO COMPEL THE ATTENDANCE OF A WITNESS.

(*See section 88.*)

To the Police-officer in charge of the police-station at _____.

WHEREAS a warrant has been duly issued to compel the attendance of (*name, description, and address*) to testify concerning a complaint pending before this Court, and it has been returned to the said warrant that it cannot be served; and whereas it has been shown to my satisfaction that he has absconded (*or is concealing himself to avoid the service of the said warrant*): and thereupon a Proclamation was duly issued and published requiring the said _____ to appear and give evidence at the time and place mentioned therein, and he has failed to appear:

This is to authorize and require you to attach by seizure the moveable property belonging to the said _____ to the value of Rupees _____ which you may find within the District of _____, and to hold the said property under attachment pending the further order of this Court and to return this warrant with an endorsement certifying the manner of its execution.

Dated this _____ day of _____, 19 ____.

(*Seal.*)

(*Signature.*)

ORDER OF ATTACHMENT TO COMPEL THE APPEARANCE OF A PERSON ACCUSED

(*See section 88.*)

To (*name and designation of the person or persons who is or are to execute the warrant.*)

WHEREAS complaint has been made before me that (*name, description, and address*) has committed (*or is suspected to have committed the offence*)

SCHEDULE V —(*Continued.*)FORMS—(*continued*).

of _____, punishable under section _____ of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said (*name*) cannot be found; and whereas it has been shown to my satisfaction that the said (*name*) has absconded (*or is concealing himself to avoid the service of the said warrant*), and thereupon a Proclamation was duly issued and published requiring the said _____ to appear to answer the said charge within _____ days: and whereas the said _____ is possessed of the following property other than land paying revenue to Government in the village (*or town*) of _____, in the District of _____, *vis.*, _____ and an order has been made for the attachment thereof • _____ :

You are hereby required to attach the said property by seizure, and to hold the same under attachment pending the further order of this Court, and to return this warrant with an endorsement certifying the manner of its execution.

Dated this _____ day of _____, 19 ____ .
(*Seal.*)

(*Signature.*)

ORDER AUTHORIZING AN ATTACHMENT BY THE DEPUTY COMMISSIONER
AS COLLECTOR.

(*See section 88.*)

To the Deputy Commissioner of the District of _____

WHEREAS complaint has been made before me that (*name, description, and address*) has committed (*or is suspected to have committed*) the offence of _____ punishable under section _____ of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said (*name*) cannot be found; and whereas it has been shown to my satisfaction that the said (*name*) has absconded (*or is concealing himself to avoid the service of the said warrant*), and thereupon a Proclamation was duly issued and published, requiring the said _____ to appear to answer the said charge within _____ days, but he has not appeared; and whereas the said _____ is possessed of certain land paying revenue to Government in the village (*or town*) of _____ in the District of _____ :

You are hereby authorized and requested to cause the said land to be attached, and to be held under attachment pending the further order of this Court, and to certify without delay what you may have done in pursuance of this order.

Dated this _____ day of _____, 19 ____ .
(*Seal.*)

(*Signature.*)

SCHEDULE V.—(*Continued.*)FORMS—(*continued*).

VII.—WARRANT IN THE FIRST INSTANCE TO BRING UP A WITNESS.

(*See section 90.*)

To (*name and designation of the Police-officer or other person or persons who is or are to execute the warrant*).

WHEREAS complaint has been made before me that _____ of _____ has (*or is suspected to have*) committed the offence of (*mention the offence concisely*), and it appears likely that (*name and description of witness*) can give evidence concerning the said complaint; and whereas I have good and sufficient reason to believe that he will not attend as a witness on the hearing of the said complaint unless compelled to do so:

This is to authorize and require you to arrest the said (*name*), and on the _____ day of _____ to bring him before this Court to be examined touching the offence complained of.

Given under my hand and the seal of the Court, this _____ day of _____, 19 ____.

(Seal.)

(Signature.)

VIII.—WARRANT TO SEARCH AFTER INFORMATION OF A PARTICULAR OFFENCE.

(*See section 96.*)

To (*name and designation of the Police-officer or other person or persons who is or are to execute the warrant*).

WHEREAS information has been laid (*or complaint has been made*) before me of the commission (*or suspected commission*) of the offence of (*mention the offence concisely*), and it has been made to appear to me that the production of (*specify the thing clearly*) is essential to the inquiry now being made (*or about to be made*) into the said offence (*or suspected offence*):

This is to authorize and require you to search for the said (*the thing specified*) in the (*describe the house or place or part thereof to which the search is to be confined*), and, if found, to produce the same forthwith before this Court returning this warrant, with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this _____ day of _____, 19 ____.

(Seal.)

(Signature.)

FORMS—(continued).

(See section 98.)

(Signature.)

SCHEDULE V.—(*Continued.*)FORMS—(*continued.*)

XI.—BOND FOR GOOD BEHAVIOUR.

(*See sections 108, 109, and 110.*)

WHEREAS I (*name*), inhabitant of (*place*), have been called upon to enter into a bond to be of good behaviour to her Majesty the Queen, Empress of India, and to all her subjects for the term of (*state the period*), I hereby bind myself to be of good behaviour to her Majesty, and to all her subjects, during the said term; and, in case of my making default therein, I bind myself to forfeit to Her Majesty the sum of Rupees .

Dated this day of , 19 .

(*Signature.*)

(*Where a bond with sureties to be executed, add*)—We do hereby declare ourselves sureties for the abovenamed that he will be of good behaviour to Her Majesty the Queen, Empress of India, and to all her subjects, during the said term; and, in case of his making default therein, we bind ourselves, jointly and severally, to forfeit to Her Majesty the sum of Rupees .

Dated this day of , 19 .

(*Signature.*)

XII.—SUMMONS ON INFORMATION OF A PROBABLE BREACH OF THE PEACE.

(*See section 114.*)

To of .

WHEREAS it has been made to appear to me by credible information that (*state the substance of the information*), and that you are likely to commit a breach of the peace (*or by which act a breach of the peace will probably be occasioned*), you are hereby required to attend in person (*or by a duly-authorized agent*) at the office of the Magistrate of on the day of 19 , at ten o'clock in the forenoon, to show cause why you should not be required to enter into a bond for Rupees , [*when sureties are required, add* - and also to give security by the bond of one (*or two, as the case may be*) surety (*or sureties*) in the sum of Rupees (*each if more than one*)], that you will keep the peace for the term of .

Given under my hand and the seal of the Court, this day of
19 .

(*Seal.*)(*Signature.*)

SCHEDULE V.—(*Continued.*)FORMS—(*continued*).}XIII.—WARRANT OF COMMITMENT ON FAILURE TO FIND SECURITY TO
KEEP THE PEACE.(*See section 123.*)To the Superintendent (*or* Keeper) of the Jail at

WHEREAS (*name and address*) appeared before me in person (*or* by his authorized agent) on the day of in obedience to a summons calling upon him to show cause why he should not enter into a bond for Rupees with one surety (*or* a bond with two sureties each in Rupees), that he, the said (*name*), would keep the peace for the period of months; and whereas an order was then made requiring the said (*name*) to enter into and find such security (*state the security ordered when it differs from that mentioned in the summons*), and he has failed to comply with the said order:

This is to authorize and require you, the said Superintendent (*or* Keeper), to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said jail for the said period of (*term of imprisonment*) unless he shall in the meantime comply with the said order by himself and his surety (*or* sureties) entering into the said bond, in which case the same shall be received, and the said (*name*) released, and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day
of , 19 .

(*Seal.*)(*Signature.*)XIV.—WARRANT OF COMMITMENT ON FAILURE TO FIND SECURITY
FOR GOOD BEHAVIOUR.(*See section 123.*)To the Superintendent (*or* Keeper) of the jail at

WHEREAS it has been made to appear to me that (*name and description*) has been and is lurking within the District of having no ostensible means of subsistence (*or* and that he is unable to give any satisfactory account of himself);

or

WHEREAS evidence of the general character *or* (*name and description*) has been adduced before me and recorded, from which it appears that he is an habitual robber (*or* house-breaker, &c., *as the case may be*):

SCHEDULE V.—(Continued.)

FORMS—(continued).

And whereas an order has been recorded stating the same and requiring the said (name) to furnish security for his good behaviour for the term of (state the period) by entering into a bond with one surety (or two or more sureties, as the case may be), himself for Rupees _____, and the said surety (or each of the said sureties) for Rupees _____, and the said (name) has failed to comply with the said order, and, for such default, has been adjudged imprisonment for (state the term) unless the said security be sooner furnished :

This is to, authorize and require you, the said Superintendent (or Keeper), to receive the said (name) into your custody, together with this warrant, and him safely to keep in the said jail for the said period of (term of imprisonment) unless he shall in the meantime comply with the said order by himself and his surety (or sureties) entering into the said bond, in which case the same shall be received, and the said (name) released, and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court this day of
 , 19 .

(Seal.)

(Signature.)

XV.—WARRANT TO DISCHARGE A PERSON IMPRISONED ON FAILURE TO GIVE SECURITY.

(See sections 123 and 124.)

To the Superintendent (or Keeper of the Jail at _____ or other officer in whose custody the person is).

WHEREAS (name and description of prisoner) was committed to your custody under warrant of the Court dated the _____ day of _____, and has since duly given security under section _____ of the Code of Criminal Procedure :

OT

and there have appeared to me sufficient grounds for the opinion that he can be released without hazard to the community:

This is to authorize and require you forthwith to discharge the said (name) from your custody, unless he is liable to be detained for some other cause.

Given under my hand and the seal of the Court this day
of , 19 .

(Seal.)

(Signature).

SCHEDULE V.—(*Continued.*)FORMS—(*continued.*)

XVI.—ORDER FOR THE REMOVAL OF NUISANCES.

(*See section 133.*)To (*name, description, and address.*)

WHEREAS it has been made to appear to me that you have caused an obstruction (*or nuisance*) to person using the public roadway (*or other public place*) which, &c. (*describe the road or public place*), by, &c. (*state what it is that causes the obstruction or nuisance*), and that such obstruction (*or nuisance*) still exists ;

or

WHEREAS it has been made to appear to me that you are carrying on as owner or manager, the trade or occupation of (*state the particular trade or occupation and the place where it is carried on*), and that the same is injurious to the public health (*or comfort*) by reason (*state briefly in what manner the injurious effects are caused*), and should be suppressed or removed to a different place ;

or

WHEREAS it has been made to appear to me that you are the owner (*or are in possession of, or have the control over*) a certain tank (*or well or excavation*) adjacent to the public way (*describe the throughfare*), and that the safety of the public is endangered by reason of the said tank (*or well or excavation*) being without a fence (*or insecurely fenced*) ;

or

WHEREAS, &c., &c. (*as the case may be*) :

I do hereby direct and require you within (*state the time allowed*) to (*state what is required to be done to abate the nuisance*) or to appear at in the Court of on the day of next, and to show cause why this order should not be enforced ;

or

I do hereby direct and require you within (*state the time allowed*) to cease carrying on the said trade or occupation at the said place, and not again to carry on the same or to remove the said trade from the place where it is now carried on, or to appear, &c. ;

or

I do hereby direct and require you within (*state the time allowed*) to put up a sufficient fence (*state the kind of fence and the part to be fenced*), or to appear, &c. ;

or

I do hereby direct and require you, &c., &c. (*as the case may be*).

Given under my hand and the seal of the Court, this day of

19 .

(Seal.)

(Signature.)

SCHEDULE V.—(*Continued.*)FORMS—(*continued.*)

XVII.—MAGISTRATE'S ORDER CONSTITUTING A JURY.

(*See section 138.*)

WHEREAS, on the day of , 19 , an order was issued to (*name*), requiring him (*state the effect of the order*), and whereas the said (*name*) has applied to me by a petition bearing date the day of , for an order appointing a jury to try whether the said recited order is reasonable and proper; I do hereby appoint (*the names, &c., of the five or more jurors*) to be the jury to try and decide the said question, and do require the said jury to report their decision within days from the date of this order at my office at .

Given under my hand and the seal of the Court, this day
of , 19 .

(Seal.)

(Signature.)

XVIII.—MAGISTRATE'S NOTICE AND PEREMPTORY ORDER AFTER
THE FINDING BY A JURY.(*See section 140.*)To (*name, description, and address*).

I HEREBY give you notice that the jury duly appointed on the petition presented by you on the day of have found that the order issued on the day of requiring you (*state substantially the requisition in the order*) is reasonable and proper. Such order has been made absolute, and I hereby direct and require you to obey the said order within (*state the time allowed*) on peril of the penalty provided by the Indian Penal Code for disobedience thereto.

Given under my hand and the seal of the Court, this day
of , 19 .

(Seal.)

(Signature.)

XIX.—INJUNCTION TO PROVIDE AGAINST IMMINENT DANGER PENDING
INQUIRY BY JURY.(*See section 142.*)To (*name, description and address*).

WHEREAS the inquiry by a jury appointed to try whether my order issued on the day of , 19 , is reasonable and proper, is still pending, and it has been made to appear to me that the nuisance

SCHEDULE V.—(*Continued.*)FORMS—(*continued.*)

mentioned in the said order is attended with so imminent serious danger to the public as to render necessary immediate measures to prevent such danger, I do hereby, under the provisions of section 142 of the Code of Criminal Procedure, direct and enjoin you forthwith to (*state plainly what is required to be done as a temporary safeguard*), pending the result of the local inquiry by the jury.

Given under my hand and the seal of the Court, this day
of 19 .

(Seal.)

(Signature.)

XX.—MAGISTRATE'S ORDER PROHIBITING THE REPETITION, &c., OF
A NUISANCE.(*See section 143.*)To (*name, description, and address*)

WHEREAS it has been made to appear to me that, &c. (*state the proper recital, guided by Form No. XVI., or Form No. XXI., as the case may be*)

I do hereby strictly order and enjoin you not to repeat the said; nuisance by again placing, or causing or permitting to be placed &c. (*as the case may be*)

Given under my hand and the seal of the Court, this day
of , 19 .

(Seal.)

(Signature.)

XXI.—MAGISTRATE'S ORDER TO PREVENT OBSTRUCTION, RIOT, &c.,

(*See section 144.*)To (*name, description and address.*)

WHEREAS it has been made to appear to me that you are in possession (*or have the management*) of (*describe clearly the property*), and that, in digging a drain on the said land, you are about to throw or place a portion of the earth and stones dug up upon the adjoining public road, so as to occasion risk of obstruction to persons using the road;

or

WHEREAS it has been made to appear to me that you and a number of other persons (*mention the class of persons*) are about to meet and proceed in a religious procession along the public street &c. (*as the case may be*), and that such procession is likely to lead to a riot or an affray;

or

WHEREAS, &c., &c. (*as the case may be*);

SCHEDULE. V.—(*Continued.*)FORMS.—(*continued.*)

I do hereby order you not to place or permit to be placed any of the earth *case* or stones dug from the said land on any part of the said road;

or

I do hereby prohibit the procession passing along the said street, and strictly warn and enjoin you not to take any part in such procession (*or as the case recited may require*).

Given under my hand and the seal of the Court, this day
of , 19 .

(*Seal.*)

(*Signature.*)

XXII.—MAGISTRATE'S ORDER DECLARING PARTY ENTITLED TO RETAIN
POSSESSION OF LAND, &C., IN DISPUTE.

(*See section 145.*)

It appearing to me, on the grounds duly recorded, that a dispute likely to induce a breach of the peace, existed between (*describe the parties by name and residence or residence only if the dispute be between bodies of villagers*) concerning certain (*state concisely the subject of dispute*) situate within the local limits of my jurisdiction, all the said parties were called upon to give in a written statement of their respective claims as to the fact of actual possession of the said (*the subject of dispute*), and being satisfied by due inquiry had thereupon without reference to the merits of the claim of either of the said parties to the legal right of possession, that the claim of actual possession by the said (*name or names or description*) is true;

I do decide and declare that he is (*or they are*) in possession of the said (*the subject of dispute*) and entitled to retain such possession until ousted by due course of law and do strictly forbid any disturbance of his (*or their*) possession in the meantime.

Given under my hand and the seal of the Court, this day
of , 19 .

(*Seal.*)

(*Signature.*)

XXIII.—WARRANT OF ATTACHMENT IN THE CASE OF A DISPUTE
AS TO THE POSSESSION OF LAND, &C.

(*See section 146.*)

To the Police-officer in charge of the Police-station at
[*or To the Collector of*].

WHEREAS it has been made to appear to me that a dispute likely to induce a breach of the peace existed between (*describe the parties concerned*

FORMS—(continued).

(Signature.)

(See section 147.)

(Signature.)

SCHEDULE V.—(*Continued.*)FORMS—(*continued.*)XXV.—BOND AND BAIL-BOND ON A PRELIMINARY INQUIRY BEFORE A
POLICE-OFFICER.(*See section 169.*)

I (*name*), of _____, being charged with the offence of _____, and
after inquiry to appear before the Magistrate of _____,

or

and after inquiry called upon to enter into my own recognizance to appear
when required, do hereby bind myself to appear at _____ in the Court
of _____, on the _____ day of _____ next (*or* on such day as I may
hereafter be required to attend) to answer further to the said charge, and,
in case of my making default herein, I bind myself to forfeit to Her
Majesty the Queen, Empress of India, the sum of Rupees _____.

Dated this _____ day of _____, 19 ____.

(Signature.)

I hereby declare myself (*or* we jointly and severally declare ourselves
and each of us) surety (*or* sureties) for the abovesaid _____ that he shall
attend at _____, in the Court of _____, on the _____ day of
next (*or* on such day as he may hereafter be required to attend), further to
answer to the charge pending against him, and, in case of his making de-
fault therein, I hereby bind myself (*or* we hereby bind ourselves) to forfeit
to Her Majesty the Queen, Empress of India, the sum of Rupees _____.

Dated this _____ day of _____, 19 ____.

(Signature.)

XXVI.—BOND TO PROSECUTE OR GIVE EVIDENCE.

(*See section 170.*)

I (*name*) of (*place*), do hereby bind myself to attend at _____,
in the Court of _____ at _____ o'clock, on the _____ day of _____ next,
and then and there to prosecute (*or* to prosecute and give evidence) (*or* to
give evidence) in the matter of a charge of _____ against one *A B.*, and
in case of making default herein, I bind myself to forfeit to Her Majesty
the Queen, Empress of India, the sum of rupees _____.

Dated this _____ day of _____, 19 ____.

(Signature.)

SCHEDULE V.—(*Continued*).FORMS.—(*continued*).XXVII.—NOTICE OF COMMITMENT BY MAGISTRATE TO
GOVERNMENT PLEADER.(*See section 218*).

THE Magistrate of _____ hereby gives notice that he has committed
one _____ for trial at the next Sessions; and the Magistrate hereby in-
structs the Government Pleader to conduct the prosecution of the said case.

The charge against the accused is, that, etc. (*state the offence as in the
charge*).

Dated this _____ day of _____, 19 ____.

(Signature)

XXVIII.—CHARGES.

(*See sections 221, 222, 223*).

(I.)—CHARGES WITH ONE HEAD.

(a) I [*name and office of Magistrate, etc.*], hereby charge you [*name of
accused person*] as follows :—

(b) That you on or about the _____ day of _____, at _____, waged
On Penal Code, section 121. _____ war against Her Majesty the Queen, Empress
of India and thereby committed an offence
punishable under section 121 of the Indian Penal Code, and within the
cognizance of the Court of Session [*when the charge is framed by a Presi-
dency Magistrate, for Court of Session, substitute High Court*].

(c) And I hereby direct that you be tried by the said Court on the said
charge.

[*Signature and seal of the Magistrate.*][*To be substituted for (b)*] :—

(2) That you, on or about the _____ day of _____, at _____, with
On section 124. _____ the intention of inducing the Hon'ble A. B.,
Member of the Council of the Governor-
General of India, to refrain from exercising a lawful power as such Member,
assaulted such Member, and thereby committed an offence punishable under
section 124 of the Indian Penal Code, and within the cognizance of the
Court of Session [*or High Court*].

(3) That you, being a public servant in the _____ Department,
On section 161. _____ directly accepted from [*state the name*], for
another party [*state the name*], a gratification
other than legal remuneration, as a motive for forbearing to do an official

SCHEDULE V.—(*Continued*).FORMS—(*continued*).

act, and thereby committed an offence punishable under section 161 of the Indian Penal Code, and within the cognizance of the Court of Session [*or High Court*].

(4) That you, on or about the day of , at did [*or omitted to do, as the case may be*]

On section 166. , such conduct being contrary to the provisions of Act , section , and known by you to be prejudicial to , and thereby committed an offence punishable under section 166 of the Indian Penal Code, and within the cognizance of the Court of Session [*or High Court*].

(5) That you, on or about the day of , at , in the course of the trial of , before ,

On section 193. , stated in evidence that “ ” which statement you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under section 193 of the Indian Penal Code, and within the cognizance of the Court of Session [*or High Court*].

(6) That you, on or about the day of , at , committed culpable homicide not amounting to murder,

On section 304. causing the death of , and thereby committed an offence punishable under section 304 of the Indian Penal Code, and within the cognizance of the Court of Session [*or High Court*].

(7) That you, on or about the day of , at , abetted

On section 306. the commission of suicide by A. B., a person in a state of intoxication, and thereby committed an offence punishable under section 306 of the Indian Penal Code, and within the cognizance of the Court of Session [*or High Court*].

(8) That you, on or about the day of , at , voluntarily

On section 325. caused grievous hurt to , and thereby committed an offence punishable under section 325 of the Indian Penal Code, and within the cognizance of the Court of Session [*or High Court*].

(9) That you, on or about the day of , at , robbed

On section 392. [*state the name*], and thereby committed an offence punishable under section 392 of the Indian Penal Code, and within the cognizance of the Court of Session [*or High Court*].

(10) That you, on or about the day of , at , committed dacoity, an offence punishable under

On section 395. section 395 of the Indian Penal Code, and within the cognizance of the Court of Session [*or High Court*].

[*In cases tried by Magistrates, substitute “within my cognizance” for “within the cognizance of the Court of Session,” and in (c) omit “by the said Court.”*]

SCHEDULE V.—(*Continued.*)FORMS—(*continued.*)

(II.)—CHARGES WITH TWO OR MORE HEADS.

(a) I [*name and office of Magistrate, &c.*], hereby charge you [*name of accused person*] as follows :—

(b) *First*—That you, on or about the day of , at ,
 On section 241. knowing a coin to be counterfeit, delivered
 the same to another person, by name *A. B.*,
 as genuine, and thereby committed an offence punishable under section
 241 of the Indian Penal Code, and within the cognizance of the Court of
 Session [*or High Court*].

Secondly.—That you, on or about the day of , at ,
 knowing a coin to be counterfeit, attempted to induce another person by
 name *A. B.*, to receive it as genuine, and thereby committed an offence
 punishable under section 241 of the Indian Penal Code, and within the
 cognizance of the Court of Session [*or High Court*]

(c) And I hereby direct that you be tried by the said Court on the said
 charge.

[*Signature and seal of the Magistrate.*]

[*To be substituted for (b)*] :—

(2) *First*.—That you, on or about the day of , at ,
 On sections 302 and 304. committed murder by causing the death of
 , and thereby committed an offence
 punishable under section 302 of the Indian Penal Code, and within the
 cognizance of the Court of Session [*or High Court*].

Secondly—That you, on or about the day of , at ,
 by causing the death of , committed culpable homicide not
 amounting to murder, and thereby committed an offence punishable under
 section 304 of the Indian Penal Code, and within the cognizance of the
 Court of Session [*or High Court*].

(3) *First*.—That you on or about the day of , at ,
 On sections 379 and 382. committed theft, and thereby committed an
 offence punishable under section 379 of the
 Indian Penal Code, and within the cognizance of the Court of Session [*or*
High Court].

Secondly.—That you, on or about the day of , at ,
 committed theft, having made preparation for causing death to a person in
 order to the committing of such theft, and thereby committed an offence
 punishable under section 382 of the Indian Penal Code, and within the cog-
 nizance of the Court of Session [*or High Court*].

Thirdly.—That you, on or about the day of , at ,
 committed theft, having made preparation for causing restraint to a
 person in order to the effecting of your escape after the committing of
 such theft,

SCHEDULE V.—(*Continued.*)FORMS—(*continued.*)

and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

Fourthly.—That you, on or about the day of , at , committed theft, having made preparation for causing fear of hurt to a person in order to the retaining of property taken by such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

(4) That you, on or about the day of , at , in the Alternative charges on sec- course of the inquiry into , before tion 193. , stated in evidence that “ ”, and that you, on or about the day of , at , in the course of the trial of , before , stated in evidence that “ ”, one of which statements you either knew or believed to be false or did not believe to be true, and thereby committed an offence punishable under section 193 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

[*In cases tried by Magistrates substitute “ within my cognizance ” for “ within the cognizance of the Court of Session ” and in (c) omit “ by the said Court ”.*]

III.—CHARGE FOR THEFT AFTER PREVIOUS CONVICTION.

I (*name and office of Magistrate, &c.*) hereby charge you (*name of accused person*) as follows:—

That you, on or about the day of , at , committed theft, and thereby committed an offence punishable under section 379 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* ^{High Court} Magistrate, *as the case may be*]

And you, the said (*name of accused*), stand further charged that you, before the committing of the said offence, that is to say, on the day of , had been convicted by the (*state Court by which conviction was had*) at of an offence punishable under Chapter XVII. of the Indian Penal Code with imprisonment for a term of three years that is to say, the offence of house-breaking by night (*describe the offence in the words used in the section under which the accused was convicted*), which conviction is still in full force and effect, and that you are thereby liable to enhanced punishment under section 75 of the Indian Penal Code.

And I hereby direct that you be tried, &c.

SCHEDULE V.—(*Continued.*)FORMS—(*continued.*)

XXIX.—WARRANT OF COMMITMENT ON A SENTENCE OF IMPRISONMENT OR FINE IF PASSED BY A MAGISTRATE.

(*See sections 245 and 258.*)To the Superintendent (*or* Keeper) of the Jail at

WHEREAS on the day of , 19 , (*name of prisoner*) the (1st, 2nd, 3rd, *as the case may be*) prisoner in case No. of the Calendar for 19 , was convicted before me (*name and official designation*) of the offence of (*mention the offence or offences concisely*) under section (*or sections*) of the Indian Penal Code (*or of Act*), and was sentenced to (*state the punishment fully and distinctly*) :

This is to authorize and require you, the said Superintendent (*or* Keeper), to receive the said (*prisoner's name*) into your custody in the said jail, together with this warrant, and there carry the aforesaid sentence into execution according to law.

Given under my hand and the seal of the Court, this day of , 19 .

(*Seal.*)(*Signature.*)

XXX.—WARRANT OF IMPRISONMENT ON FAILURE TO RECOVER AMENDS BY DISTRESS.

(*See section 250.*)To the Superintendent (*or* Keeper) of the Jail at .

WHEREAS (*name and description*) has brought against (*name and description of the accused person*) the complaint that (*mention it concisely*), and the same has been dismissed as frivolous (*or* vexatious), and the order of dismissal awards payment by the said (*name of complainant*) of the sum of Rupees as amends; and whereas the said sum has not been paid, and cannot be recovered by distress of the moveable property of the said (*name of complainant*), and an order has been made for his simple imprisonment in jail for the period of days unless the aforesaid sum be sooner paid :

This is to authorize and require you, the said Superintendent (*or* Keeper), to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said jail for the said period of (*term of imprisonment*), subject to the provisions of section 69 of the Indian Penal Code unless the said sum be sooner paid, and, on the receipt thereof, forthwith to set him at liberty, returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of 19 .

(*Seal.*)(*Signature.*)

SCHEDULE V.—(*Continued.*)FORMS—(*continued.*)

XXXI.—SUMMONS TO WITNESS.

(*See sections 68 and 252.*)

To _____ of _____ .

WHEREAS complaint has been made before me that
has (*or is suspected to have*) committed the offence of (*state the offence
concisely with time and place*), and it appears to me that you are likely to
give material evidence for the prosecution :

You are hereby summoned to appear before this Court on the _____ day of
next at ten o'clock in the forenoon, to testify what you know concern-
ing the matter of the said complaint and not to depart thence without leave
of the Court ; and you are hereby warned that, if you shall, without just
excuse, neglect or refuse to appear on the said date, a warrant will be issued
to compel your attendance.

Given under my hand and the seal of the Court, this _____ day of
, 19 .

(Seal.)

(Signature.)

XXXII.—PRECEPT TO DISTRICT MAGISTRATE TO SUMMON JURORS
AND ASSESSORS.(*See section 326.*)

To the District Magistrate of _____ .

WHEREAS a Criminal Session is appointed to be held in the Court-
house at _____ on the _____ day of _____ next, and the names of the persons
herein stated have been duly drawn by lot from among those named in the
revised list of jurors and assessors furnished to this Court ; you are hereby
required to summon the said persons to attend at the said Court of Session
at 10 A. M., on the said date, and, within such date, to certify that you have
done so in pursuance of this Precept.

(*Here enter the names of jurors and assessors.*)

Given under my hand and the seal of the Court, this _____ day of _____ ,
19 .

(Seal)

(Signature.)

SCHEDULE V.—(*Continued.*)FORMS—(*continued.*)

XXXIII.—SUMMONS TO ASSESSOR OR JUROR.

(*See section 328.*)To (*name*) of (*place*.)

PURSUANT to a precept directed to me by the Court of Session of requiring your attendance as an assessor (*or* a juror) at the next Criminal Session, you are hereby summoned to attend at the said Court of Session at (*place*) at ten o'clock in the forenoon on the day of next.

Given under my hand and the seal of office, this day of , 19 .
(*Seal.*) (*Signature.*)

XXXIV.—WARRANT OF COMMITMENT UNDER SENTENCE OF DEATH.

(*See section 374.*)To the Superintendent (*or* Keeper) of the Jail at .

WHEREAS, at the Session held before me on the day of 19 , (*name of prisoner*) the (1st, 2nd, 3rd, *as the case may be*) prisoner in case No. of the Calendar at the said Session, was duly convicted of the offence of culpable homicide amounting to murder under section of the Indian Penal Code, and sentenced to suffer death, subject to the confirmation of the said sentence by the Court of :

This is to authorize and require you, the said Superintendent (*or* Keeper), to receive the said (*prisoner's name*) into your custody in the said jail, together with this warrant, and him there safely to keep until you shall receive the further warrant or order of this Court, carrying into effect the order of the said Court.

Given under my hand and the seal of the Court, this day of , 19 .
(*Seal.*) (*Signature.*)

XXXV.—WARRANT OF EXECUTION ON A SENTENCE OF DEATH.

(*See section 381.*)To the Superintendent (*or* Keeper) of the Jail at .

WHEREAS (*name of prisoner*) the (1st, 2nd, 3rd, *as the case may be*) prisoner in Case No. of the Calendar at the Session held before me on the day of , 19 , has been by a warrant of this Court, dated the day of , committed to your custody under sentence of death; and whereas the order of the Court of confirming the said sentence has been received by this Court;

SCHEDULE V.—(*Continued.*)FORMS—(*continued.*)

This is to authorize and require you the said Superintendent (*or Keeper*), to carry the said sentence into execution by causing the said *i* to be hanged by the neck until he be dead, at (*time and place of execution*), and to return this warrant to the Court with an endorsement certifying that the sentence has been executed.

Given under my hand and the seal of the Court, this day of
19 .
(*Seal.*) (Signature.)

XXXVI.—WARRANT AFTER A COMMUTATION OF A SENTENCE.

(*See sections 381 and 382.*)

To the Superintendent (*or Keeper*) of the Jail at .

WHEREAS, at a Session held on the day of , 19 (*name of prisoner*), the (1st, 2nd, 3rd, *as the case may be*) prisoner in case No. of the Calendar at the said Session, was convicted of the offence of punishable under section of the Indian Penal Code and sentenced to , and was thereupon committed to your custody; and whereas, by the order of the Court of (a duplicate of which is hereunto annexed) the punishment adjudged by the said sentence has been commuted to the punishment of transportation for life (*or as the case may be*):

This is to authorize and require you, the said Superintendent (*or Keeper*), safely to keep the said (*prisoner's name*) in your custody in the said jail, as by law is required, until he shall be delivered over by you to the proper authority and custody for the purpose of his undergoing the punishment of transportation under the said order,

or

(*if the mitigated sentence is one of imprisonment, say, after the words, "custody in the said jail," "and there to carry into execution the punishment of imprisonment under the said order according to law"*).

Given under my hand and the seal of the Court, this day of ,
19 .
(*Seal.*) (Signature.)

XXXVII.—WARRANT TO LEVY A FINE BY DISTRESS AND SALE.

(*See section 386.*)

To (*name and designation of the Police-officer or other person or persons who is or are to execute the warrant*).

WHEREAS (*name and description of the offender*) was, on the day of 19 , convicted before me of the offence of (*mention the offence concisely*)

SCHEDULE V.—(*Continued.*)FORMS—(*continued*).

and sentenced to pay a fine of Rupees , and whereas the said (*name*), although required to pay the said fine, has not paid the same or any part thereof :

This is to authorize and require you to make distress by seizure of any moveable property belonging to the said (*name*) which may be found within the district of ; and, if, within (*state the number of days or hours allowed*) next after such distress, the said sum shall not be paid (*or forthwith*), to sell the moveable property distrained or so much thereof as shall be sufficient to satisfy the said fine, returning this warrant, with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this day of
19 .

(Seal.)

(Signature.)

XXXVIII.—WARRANT OF COMMITMENT IN CERTAIN CASES OF CONTEMPT WHEN A FINE IS IMPOSED.

(*See section 480.*)

To the Superintendent (*or* Keeper) of the Jail at .

WHEREAS, at a Court holden before me on this day (*name and description of the offender*), in the presence (*or* view) of the Court, committed wilful contempt;

And whereas for such contempt the said (*name of offender*) has been adjudged by the Court to pay a fine of Rupees , or in default to suffer simple imprisonment for the space of (*state the number of months or days*) :

This is to authorize and require you, the Superintendent (*or* Keeper) of the said jail, to receive the said (*name of offender*) into your custody, together with this warrant, and him safely to keep in the said jail for the said period of (*term of imprisonment*) unless the said fine be sooner paid ; and, on the receipt thereof, forthwith to set him at liberty, returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of ,
19 .

(Seal.)

(Signature.)

SCHEDULE V.—(Continued.)

FORMS—(continued).

**XXXIX.—MAGISTRATE'S OR JUDGE'S WARRANT OF COMMITMENT OF
WITNESS REFUSING TO ANSWER.**

(See section 485.)

To (name and designation of officer of Court).

WHEREAS (name and description), being summoned (or brought before this Court) as a witness, and this day required to give evidence on an enquiry into an alleged offence, refused to answer a certain question (or certain questions) put to him touching the said alleged offence, and duly recorded, without alleging any just excuse for such refusal, and for his contempt has been adjudged detention in custody for (term of detention adjudged):

This is to authorize and require you to take the said (name) into custody, and him safely to keep in your custody for the space of days unless in the meantime he shall consent to be examined, and to answer the questions asked of him and, on the last of the said days, or forthwith on such consent being known, to bring him before this Court to be dealt with accordingly to law, returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of ,
19 .
(Seal.) *(Signature.)*

XL.—WARRANT OF IMPRISONMENT ON FAILURE TO PAY MAINTENANCE.

(See section 488.)

To the Superintendent (or Keeper) of the Jail at

WHEREAS (*name, description, and address*) has been proved before me to be possessed of sufficient means to maintain his wife (*name*) [*or his child* (*name*), who is by reason of (*state the reason*) unable to maintain herself (*or himself*)] and to have neglected (*or refused*) to do so, and an order has been duly made requiring the said (*name*) to allow to his said wife (*or child*) for maintenance the monthly sum of Rupees _____; and whereas it has been further proved that the said (*name*), in wilful disregard of the said order, has failed to pay Rupees _____, being the amount of the allowance for the month (*or months*) of _____, and thereupon an order was made adjudging him to undergo simple (*or rigorous*) imprisonment in the said jail for the period of _____:

This is to authorize and require you, the said Superintendent (or Keeper), to receive the said (name) into your custody in the said jail, together

SCHEDULE V.—(*Continued.*)FORMS—(*continued*).

with this warrant, and there carry the said order into execution according to law, returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of ,
19 .

(Seal.)

(Signature.)

XLI.—WARRANT TO ENFORCE THE PAYMENT OF MAINTENANCE BY
DISTRESS AND SALE.

(See section 488.)

To (*name and designation of the Police-officer or other person to execute the warrant*).

WHEREAS an order has been duly made requiring (*name*) to allow to his said wife (*or child*) for maintenance the monthly sum of Rupees , and whereas the said (*name*), in wilful disregard of the said order, has failed to pay Rupees , being the amount of the allowance for the month (*or months*) of :

This is to authorize and require you to make distress by seizure of any moveable property belonging to the said (*name*) which may be found within the district of and, if, within (*state the number of days or hours allowed*) next after such distress, the said sum shall not be paid (*or forthwith*), to sell the moveable property distrained, or so much thereof as shall be sufficient to satisfy the said sum, returning this warrant, with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this day of ,
19 .

(Seal.)

(Signature.)

XLII.—BOND AND BAIL-BOND ON A PRELIMINARY INQUIRY BEFORE A
MAGISTRATE.

(See section 496 and 499.)

I, (*name*), of (*place*), being brought before the Magistrate of (*as the case may be*), charged with the offence of , and required to give security for my attendance in his Court, and at the Court of Session, if required, to bind myself to attend at the Court of the said Magistrate on every day of the preliminary enquiry into the said charge, and, should the case be sent for trial by the Court of Session, to be, and appear, before the

SCHEDULE V.—(*Continued.*)FORMS—(*continued.*)

said Court when called upon to answer the charge against me; and, in case of my making default herein, I bind myself to forfeit, to Her Majesty the Queen, Empress of India, the sum of Rupees .

Dated this day of , 19 .

(*Signature.*)

I hereby declare myself (*or* We jointly and severally declare ourselves and each of us) surety (*or* sureties) for the said (*name*) that he shall attend at the Court of on every day of the preliminary enquiry into the offence charged against him, and, should the case be sent for trial by the Court of Session, that he shall be, and appear, before the said Court to answer the charge against him, and, in case of his making default therein, I bind myself (*or* we bind ourselves) to forfeit, to Her Majesty the Queen, Empress of India, the sum of Rupees .

Dated this day of , 19 .

(*Signature.*)

XLIII.—WARRANT TO DISCHARGE A PERSON IMPRISONED ON
FAILURE TO GIVE SECURITY.

(*See section 500.*)

To the Superintendent (*or* Keeper) of the Jail at (*or other officer in whose custody the person is.*)

WHEREAS (*name and description of prisoner*) was committed to your custody under warrant of this Court, dated the day of , and has since with his surety (*or* sureties) duly executed a bond under section 499 of the Code of Criminal Procedure :

This is to authorize and require you forthwith to discharge the said (*name*) from your custody, unless he is liable to be detained for some other matter.

Given under my hand and the seal of the Court, this day of
19 .

(*Seal.*)

(*Signature.*)

XLIV.—WARRANT OF ATTACHMENT TO ENFORCE A BOND.

(*See section 514.*)

To the Police-officer in charge of the Police-station at
WHEREAS (*name, description, and address of person*) has failed to appear on (*mention the occasion*) pursuant to his recognizance, and has, by such

FORMS—(continued).

(Signature)

(Signature.)

WHEREAS on the day of , 19 , you became surety by a bond of (name) of (place) that he would be of good behaviour for the period of , and bound yourself in default thereof to forfeit the sum of Rupees to Her Majesty the Queen, Empress of India; and

SCHEDULE V.—(*Continued.*)FORMS—(*continued.*)

whereas the said (*name*) has been convicted of the offence of (*mention the offence concisely*) committed since you became such surety, whereby your security-bond has become forfeited :

You are hereby required to pay the said penalty of Rupees , or to show cause within days why it should not be paid.

Given under my hand and the seal of the Court, this day of , 19 .

(*Seal.*)

(*Signature.*)

XLVII.—WARRANT OF ATTACHMENT AGAINST A SURETY. .

(*See section 514.*)

To of .

WHEREAS (*name, description, and address*) has bound himself (as surety for the appearance of (*mention the condition of the bond*), and the said (*name*) has made default, and thereby forfeited to Her Majesty the Queen, Empress of India, the sum of Rupees (*the penalty in the bond*);

This is to authorize and require you to attach any moveable property of the said (*name*) which you may find within the district of , by seizure and detention; and, if the said amount be not paid within three days to sell the property so attached, or so much of it as may be sufficient to realize the amount aforesaid, and make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 19 .

(*Seal.*)

(*Signature.*)

XLVIII.—WARRANT OF COMMITMENT OF THE SURETY OF AN ACCUSED PERSON ADMITTED TO BAIL.

(*See section 514.*)

To the Superintendent (*or* Keeper) of the Civil Jail at .

WHEREAS (*name and description of surety*) has bound himself as a surety for the appearance of (*state the condition of the bond*), and the said (*name*) has therein made default, whereby the penalty mentioned in the said bond has been forfeited to Her Majesty the Queen, Empress of India; and whereas the said (*name of surety*) has, on due notice to him, failed to pay the said sum or show any sufficient cause why payment should not be

SCHEDULE V.—(*Continued.*)FORMS—(*continued*).

enforced against him, and the same cannot be recovered by attachment and sale of moveable property of his, and an order has been made for his imprisonment in the civil jail for (*specify the period*):

This is to authorize and require you, the said Superintendent (*or Keeper*) to receive the said (*name*) into your custody with this warrant, and him safely to keep in the said jail for the said (*term of imprisonment*), and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of ,
19 .
(*Seal.*) (*Signature.*)

XLIX.—NOTICE TO THE PRINCIPAL OF FORFEITURE OF A BOND TO KEEP THE PEACE.

(*See section 514.*)

To (*name, description, and address*).

WHEREAS, on the day of , 19 , you entered into a bond not to commit, etc. (*as in the bond*), and proof of the forfeiture of the same has been given before me and duly recorded:

You are hereby called upon to pay the said penalty of Rupees , or to show cause before me within days why payment of the same should not be enforced against you.

Dated this day of , 19 .
(*Seal.*) (*Signature.*)

L.—WARRANT TO ATTACH THE PROPERTY OF THE PRINCIPAL ON BREACH OF A BOND TO KEEP THE PEACE.

(*See section 514.*)

To (*name and designation of Police-officer*) at the Police-station of .

WHEREAS (*name and description*) did, on the day of , 19 , enter into a bond for the sum of Rupees , binding himself not to commit a breach of the peace, etc. (*as in the bond*), and proof of the forfeiture of the said bond has been given before me and duly recorded; and whereas notice has been given to the said (*name*) calling upon him to show cause why the said sum should not be paid, and he has failed to do so, or to pay the said sum;

SCHEDULE V.—(*Continued.*)FORMS—(*continued.*)

This is to authorize and require you to attach by seizure moveable property belonging to the said (*name*) to the value of Rupees which you may find within the district of , and, if the said sum be not paid within , to sell the property so attached, or so much of it as may be sufficient to realize the same, and to make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 19 .

(*Seal.*)

(*Signature.*)

LI.—WARRANT OF IMPRISONMENT ON BREACH OF A BOND TO KEEP THE PEACE.

(*See section 514.*)

To the Superintendent (*or* Keeper) of the Civil jail at .

WHEREAS proof has been given before me and duly recorded that (*name and description*) has committed a breach of the bond entered into by him to keep the peace, whereby he has forfeited to Her Majesty the Queen, Empress of India, the sum of Rupees ; and whereas the said (*name*) has failed to pay the said sum, or to show cause why the said sum should not be paid, although duly called upon to do so, and payment thereof cannot be enforced by attachment of his moveable property, and an order has been made for the imprisonment of the said (*name*) in the civil jail for the period of (*term of imprisonment*):

This is to authorize and require you, the said Superintendent (*or* Keeper) of the said civil jail, to receive the (*name*) into your custody, together with this warrant, and him safely to keep in the said jail for the said period of (*term of imprisonment*), and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 19 .

(*Seal.*)

(*Signature.*)

LII.—WARRANT OF ATTACHMENT AND SALE ON FORFEITURE OF BOND FOR GOOD BEHAVIOUR.

(*See section 514.*)

To the Police-officer in charge of the Police-station at .

WHEREAS (*name, description, and address*) did, on the day of , 19 , give security by bond in the sum of Rupees for the good behaviour of (*name, &c., of the principal*), and proof has been given before

SCHEDULE V.—(*Concluded.*)FORMS—(*Concluded.*)

me and duly recorded of the commission by the said (*name*) of the offence of _____, whereby the said bond has been forfeited; and whereas notice has been given to the said (*name*), calling upon him to show cause why the said sum should not be paid, and he has failed to do so, or to pay the said sum:

This is to authorize and require you to attach by seizure moveable property belonging to the said (*name*) to the value of Rupees _____ which you may find within the district of _____, and, if the said sum be not paid within _____, to sell the property so attached or so much of it as may be sufficient to realize the same, and to make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this _____ day of
19 _____.

(Seal.)

(Signature.)

LIII.—WARRANT OF IMPRISONMENT ON FORFEITURE OF BOND
FOR GOOD BEHAVIOUR.

(See Section 514.)

To the Superintendent (*or* Keeper) of the Civil jail at _____

WHEREAS (*name, description, and address*) did, on the _____ day of _____ 19 _____, give security by bond in the sum of Rupees _____ for the good behavior of (*name & of the principal*), and proof of the breach of the said bond has been given before me and duly recorded, whereby the said (*name*) has forfeited to her Majesty the Queen, Empress of India, the sum of Rupees _____, and whereas he has failed to pay the said sum or to show cause why the said sum should not be paid, although duly called upon to do so, and payment thereof cannot be enforced by attachment of his moveable property, and an order has been made for the imprisonment of the said (*name*) in the civil jail for the period of (*term of imprisonment*):

This is to authorize and require you, the Superintendent (*or* Keeper), to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said jail for the said period of (*term of imprisonment*), returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this _____ day of
19 _____.

(Seal.)

(Signature)

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THE INDIAN PENAL CODE.
(Act No. XLV of 1860)
~~MADE IN INDIA~~

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THE INDIAN PENAL CODE

(Act XLV. of 1860).*

RECEIVED G.-G.'S ASSENT ON OCTOBER 6, 1860.

CHAPTER I.

INTRODUCTION.

WHEREAS it is expedient to provide a General Penal Code for British India; It is enacted
Preamble. as follows:—

* All offences under the Penal Code are to be enquired into and tried according to the provisions of the Criminal Procedure Code (Act V. of 1898).—See ss 5 and 28 of Act V. of 1898.

The Penal Code is superseded by the Sindh Frontier Regulation (V. of 1872), s 11, in so far as that Regulation is consistent with it.

As to offences which may be tried summarily, see ss. 260 and 261 of the Code of Criminal Procedure (Act V. of 1898).

The Penal Code has been applied to offences committed before the 1st January 1862—

(1) in the Punjab, by Act IV. of 1872, s. 39;

(2) in Ajmere-Merwara, by Reg. III. of 1877, s. 29.

The Code has been declared in force—

(1) in the Santhal Parganas by Reg. III. of 1872, s. 3, as amended by Reg. III. of 1899;

(2) in the Arakan Hill District, by Reg. IX. of 1874, s. 3;

(3) in Upper Burma generally (except the Shan States), by Burma Laws Act (XIII. of 1898), s. 4 (1), and Sch. I.;

(4) in British Baluchistan, by Reg. I. of 1890, s. 3;

(5) in Angul and the Khondmals, by Reg. I. of 1894, s. 3;

(6) in the Kachin Hill-tracts, as regards hill-tribes (with modifications), by Reg. I. of 1895, s. 3;

(7) in Chin Hills as regards hill-tribes (with modifications), by Reg. V. of 1896, s. 3;

(8) in the Chittagong Hill-tracts, by Reg. I. of 1900, s. 4.

The Code has been declared, by notification under s. 3 (a) of the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts, namely:—

(1) the N.-W. P. Tarai Districts (see *Gazette of India*, 1876, Pt. I., p. 505); and

1. This Act shall be called "The Indian Penal Code," and shall take effect . . . * throughout the whole of the territories which are or may become vested in Her Majesty by the Statute 21 and 22 Victoria, Chapter 106,† entitled "An Act for the better Government of India." . . . ‡

2. Every person shall be liable to punishment under this Code, and not otherwise, for every act or omission contrary to the provisions thereof, of which he shall be guilty within the said territories. . . . §

3. Any person liable, by any law passed by the Governor-General of India in Council, to be tried for an offence committed beyond the limits of the said territories, shall be dealt with according to the provisions of this Code for any act committed beyond the said territories in the same manner as if such act had been committed within the said territories.

4. The provisions of this Code apply also to any offence committed by—

(2) the Districts of Hazaribagh, Lahardaga, and Manbhoom, and Pargana Dhalbhum, and the Kolhan in the District of Singbhum (see *Gazette of India*, 1881, Pt. I., p. 504).

By notification under ss. 3 and 5A of the same Act, it has been declared in force in the Pargana of Manpur in Central India (see *Gazette of India*, 1899 Pt. II., p. 419). It has been extended, under s. 5 of the same Act, to the Lushai Hills (see Notification No. 923-P., *Gazette of India*, 1898, Pt. II., p. 345).

* In s. 1, the words and figures, "on and from the first day of May, 1861," repealed by the Repealing and Amending Act (XII. of 1891), Sch. I., have here been omitted

† This Statute may now be cited as the Government of India Act, 1858—See the Short Titles Act, 1859.

‡ In s. 1, the words, "except the Settlement of Prince of Wales's Island, Singapur, and Malacca," repealed by the Repealing and Amending Act (XII. of 1891), Sch. I., have here been omitted.

§ In s. 2, the words and figures, "on and from the first day of May, 1861," repealed by the Repealing and Amending Act (XII. of 1891), Sch. I., have here been omitted. As to offences in territorial waters, see the Territorial Waters Jurisdiction Act, 1878 (Stat. 41 & 42 Vict., c. 73)

|| S. 4 has been substituted for the original by the Indian Penal Code Amendment Act (IV. of 1898), s. 2.

- (1) any Native Indian subject of Her Majesty in any place without and beyond British India ;*
- (2) any other British subject within the territories of any Native Prince or Chief in India ;*
- (3) any servant of the Queen, whether a British subject or not, within the territories of any Native Prince or Chief in India.*

Explanation.—In this section the word ‘offence’ includes every act committed outside British India* which, if committed in British India,* would be punishable under this Code.

Illustrations.

(a.) *A*, a coolie, who is a Native Indian subject, commits a murder in Uganda : He can be tried and convicted of murder in any place in British India in which he may be found.

(b.) *B*, a European British subject, commits a murder in Kashmir : He can be tried and convicted of murder in any place in British India in which he may be found.

(c.) *C*, a foreigner who is in the service of the Punjab Government, commits a murder in Hind : He can be tried and convicted of murder at any place in British India in which he may be found.

(d.) *D*, a British subject living in Indore, instigates *E* to commit a murder in Bombay : *D* is guilty of abetting murder.

5. Nothing in this Act is intended to repeal, vary, suspend, or affect any of the provisions of the Statute 3 and 4, William IV., Chapter 85,† or of any Act of Parliament passed after that Statute, in anywise affecting the East India Company, or the said territories or the inhabitants thereof; or any of the provisions of any Act‡ for punishing mutiny and desertion of officers and soldiers in the service of Her Majesty, . . . § or of any special or local law.||

* For definitions of “British India” and “India,” see the General Clauses Act (X. of 1897), s. 3 (7), (27).

† This Statute may now be cited as the Government of India Act, 1833.—See the Short Titles Act, 1896 (Stat. 59 & 60 Vict., c. 14).

‡ See now the Army Act (Stat. 44 & 45 Vict., c. 58) as continued and amended by subsequent annual Army Acts.

§ In s. 5, the words, “or of the East India Company, or of any Act for the Government of the East India Company,” repealed by the Repealing Act (XIV. of 1870), have here been omitted.

|| A similar saving as to special and local laws was enacted in the Indian Penal Code Amendment Act (XXVII. of 1870). The amendments made by that Act have been embodied in this edition of the Penal Code.

CHAPTER II.

GENERAL EXPLANATIONS.

6. Throughout this Code, every definition of an offence, every Definition in the Code to be understood subject to exceptions. penal provision, and every illustration of every such definition or penal provision, shall be understood subject to the exceptions contained in the Chapter* entitled "General Exceptions," though those exceptions are not repeated in such definition, penal provision, or illustration.

Illustrations.

(a.) The sections in this Code which contain definitions of offences do not express that a child under seven years of age cannot commit such offences; but the definitions are to be understood subject to the general exception† which provides that nothing shall be an offence which is done by a child under seven years of age.

(b.) A, a police-officer, without warrant, apprehends Z, who has committed murder: Here A is not guilty of the offence of wrongful confinement, for he was bound by law to apprehend Z, and therefore the case falls within the general exception‡ which provides that "nothing is an offence which is done by a person who is bound by law to do it."

7. Every expression which is explained in any part of this Code is used in every part of this Code in conformity with the explanation.
Sense of expression once explained.

8. The pronoun "he" and its derivatives are used of any person, whether male or female.
Gender.

9. Unless the contrary appears from the context, words importing the singular number include the plural number, and words importing the plural number include the singular number.
Number.

10. The word "man" denotes a male human being of any age: the word "woman" denotes a female human being of any age.
"Man."
"Woman."

11. The word "person" includes any company or association, or body of persons, whether incorporated or not.
"Person."

* See Ch. IV., *infra*.† In s. 82, *infra*.‡ In s. 76, *infra*.

12. The word "public" includes any class of the public
 "Public." or any community.

13. The word "Queen" denotes the Sovereign for the time
 "Queen." being of the United Kingdom of Great Britain and Ireland.

14. The words "servants of the Queen" denote all officers
 "Servants of the Queen." or servants continued, appointed, or employed in India by or under the authority of the said Statute 21 and 22 Victoria, Chapter 106,* entitled "An Act for the Better Government of India," or by or under the authority of the Government of India or any Government.

15. The words "British India" denote the territories which
 "British India." are or may become vested in Her Majesty by the said Statute 21 and 22 Victoria, Chapter 106,* entitled "An Act for the Better Government of India." . . . †

16. The words "Government of India" denote the Governor-General of India in Council, or, during
 "Government of India." the absence of the Governor-General of India from his Council, the President in Council, or the Governor-General of India alone, as regards the powers which may be lawfully exercised by them or him, respectively.

17. The word "Government"‡ denotes the person or persons
 "Government." authorized by law to administer executive government in any part of British India.

18. The word "Presidency" denotes the territories sub-
 "Presidency." ject to the Government of a Presidency.

19. The word "Judge" denotes, not only every person who
 "Judge." is officially designated as a Judge, but also every person—

who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not

* This Statute may now be cited as "The Government of India Act, 1858."—See the Short Titles Act, 1896 (Stat. 59 & 60 Vict., c. 14).

† In s. 15, the words, "except the Settlement of the Prince of Wales's Island, Singapore, and Malacca," repealed by the Repealing and Amending Act (XII. of 1891), have here been omitted.

‡ But see s. 263A (4), *infra*.

appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or

who is one of a body of persons, which body of persons is empowered by law to give such a judgment.

Illustrations.

(a.) A Collector exercising jurisdiction in a suit under Act X. of 1859* is a Judge.

(b.) A Magistrate exercising jurisdiction in respect of a charge on which he has power to sentence to fine or imprisonment, with or without appeal, is a Judge.

(c.) A member of a panchayat, which has power, under Regulation VII., 1816,† of the Madras Code, to try and determine suits, is a Judge.

(d.) A Magistrate exercising jurisdiction in respect of a charge on which he has power only to commit for trial to another Court is not a Judge.

20. The words "Court of Justice" denote a Judge who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially.

Illustration.

A panchayat acting under Regulation VII., 1816,† of the Madras Code, having power to try and determine suits, is a Court of Justice.

* Act X. of 1859 (an Act to amend the Law relating to the Recovery of Rent in the Presidency of Fort William in Bengal, has been repealed in the Chutia Nagpur Division of Bengal (except as to the District of Manbhum and the Tributary Mahals) by the Chutia Nagpur Landlord and Tenant Procedure Act (Ben. Act I. of 1879), and in the rest of Bengal (except as to Calcutta, Orissa, and the Scheduled Districts) by the Bengal Tenancy Act (VIII. of 1885). It is now in force in the District of Manbhum, in the Darjeeling District, and in parts of the Jalpaiguri District in Bengal, and such parts of it as are not inconsistent with the portions of Act VIII. of 1885 which have been extended to the Orissa Division are in force in that division.

Act X. of 1859 has also been repealed in the North-Western Provinces (except as to certain Scheduled Districts) by the N.-W. P. Rent Act (XVIII. of 1873), and, in the Central Provinces, by the Central Provinces Tenancy Act (IX. of 1883), which has been superseded by the Central Provinces Tenancy Act (XI. of 1898).

In the North-Western Provinces, for "Act X. of 1859," the words and figures "the North-Western Provinces Tenancy Act, 1901," have been substituted.—See the N.-W. P. Tenancy Act (II. of 1901).

† Mad. Reg. VII. of 1816 has been repealed by the Madras Civil Courts Act (III. of 1873).

21. The words "public servant"* denote a person falling under any of the descriptions hereinafter following, namely:—

"Public servant. "

First.—Every covenanted servant of the Queen :

Second.—Every commissioned officer in the military or naval force of the Queen while serving under the Government of India or any Government :

Third.—Every Judge :

Fourth.—Every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorized by a Court of Justice to perform any of such duties :

Fifth.—Every juryman, assessor, or member of a panchayat assisting a Court of Justice or public servant :

Sixth.—Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority :

Seventh.—Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement :

Eighth.—Every officer of Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety, or convenience :

Ninth.—Every officer whose duty it is, as such officer, to take, receive, keep, or expend any property on behalf of Government, or to make any survey, assessment, or contract on behalf of Government, or to execute any revenue-process, or to investigate, or to report on any matter affecting the pecuniary interests of Government, or to make, authenticate, or keep any document relating to the pecuniary interests of Government, or to prevent the infraction of any law for the protection of the pecuniary

* Later Acts and Regulations declare various other functionaries to be public servants for the purposes of the Penal Code, *e.g.*, Examiner of the University of Allahabad, by s. 18 (1) of the Allahabad University Act (XVIII. of 1887).

interests of Government, and every officer in the service or pay of Government, or remunerated by fees or commission for the performance of any public duty :

Tenth.—Every officer whose duty it is, as such officer, to take, receive, keep, or expend any property, to make any survey or assessment, or to levy any rate or tax for any secular common purpose of any village, town, or district, or to make, authenticate, or keep any document for the ascertaining of the rights of the people of any village, town, or district.

Illustration.

A Municipal Commissioner is a public servant.

Explanation 1.—Persons falling under any of the above descriptions are public servants, whether appointed by the Government or not.

Explanation 2.—Wherever the words “public servant” occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

22. The words “moveable property” are intended to include
 “Moveable property.” corporeal property of every description except land and things attached to the earth, or permanently fastened to anything which is attached to the earth.

23. “Wrongful gain” is gain by unlawful means of property
 “Wrongful gain.” to which the person gaining it is not legally entitled.

“Wrongful loss” is the loss by unlawful means of property
 “Wrongful loss.” to which the person losing it is legally entitled.

A person is said to gain wrongfully when such person retains
 Gaining wrongfully; losing wrongfully, as well as when such person wrongfully. acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property.

24. Whoever does anything with the intention of causing
 “Dishonestly.” wrongful gain to one person or wrongful loss to another person is said to do that thing “dishonestly.”

25. A person is said to do a thing "fraudulently" if he does that thing with intent to defraud, but not otherwise.
 "Fraudulently."

26. A person is said to have "reason to believe" a thing if he has sufficient cause to believe that thing, but not otherwise.
 "Reason to believe."

27. When property is in the possession of a person's wife, clerk, or servant on account of that wife, clerk, or servant, it is in that person's possession within the meaning of this Code.
 "Property in possession of wife, clerk, or servant."

Explanation.—A person employed temporarily, or on a particular occasion, in the capacity of a clerk or servant, is a clerk or servant within the meaning of this section.

23. A person is said to "counterfeit" who causes one thing to resemble another thing, intending, by means of that resemblance, to practise deception, or knowing it to be likely that deception will thereby be practised.
 "Counterfeit."

*Explanation 1.**—It is not essential to counterfeiting that the imitation should be exact.

*Explanation 2.**—When a person causes one thing to resemble another thing, and the resemblance is such that a person might be deceived thereby, if shall be presumed, until the contrary is proved, that the person so causing the one thing to resemble the other thing intended, by means of that resemblance, to practise deception, or knew it to be likely that deception would thereby be practised.

29. The word "document" denotes any matter expressed or described upon any substance by means of letters, figures, or marks, or by more than one of those means, intended to be used, or which may be used, as evidence of that matter.
 "Document."

Explanation 1.—It is immaterial by what means, or upon what substance, the letters figures, or marks are formed, or whether the evidence is intended for, or may be used in, a Court of Justice or not.

* These two explanations have been substituted for the original by the Metal Tokens Act (I. of 1889), s. 9.

Illustrations.

A writing expressing the terms of a contract, which may be used as evidence of the contract, is a document.

A cheque upon a banker is a document.

A power-of-attorney is a document.

A map or plan which is intended to be used, or which may be used, as evidence, is a document.

A writing containing directions or instructions is a document.

Explanation 2.—Whatever is expressed by means of letters, figures, or marks, as explained by mercantile or other usage, shall be deemed to be expressed by such letters, figures, or marks within the meaning of this section, although the same may not be actually expressed.

Illustration.

A writes his name on the back of a bill of exchange payable to his order. The meaning of the endorsement, as explained by mercantile usage, is that the bill is to be paid to the holder. The endorsement is a document, and must be construed in the same manner as if the words "pay to the holder," or words to that effect, had been written over the signature.

30. The words "valuable security" denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished, or released, or whereby any person acknowledges that he lies under legal liability, or has not a certain legal right.

Illustration.

A writes his name on the back of a bill of exchange: As the effect of this endorsement is to transfer the right to the bill to any person who may become the lawful holder of it, the endorsement is a "valuable security."

31. The words "a will" denote any testamentary document.

32. In every part of this Code, except where a contrary intention appears from the context, words which refer to acts done extend also to illegal omissions.

33. The word "act" denotes as well a series of acts as a single act; the word "omission" denotes as well a series of omissions as a single omission.

"Act : "

"Omission. "

34.* When a criminal act is done by several persons in furtherance or the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

Acts done by several persons in furtherance of common intention.

35. Whenever an act, which is criminal only by reason of its being done with a criminal knowledge or intention, is done by several persons, each of such persons who joins in the act with such knowledge or intention is liable for the act in the same manner as if the act were done by him alone with that knowledge or intention.

When such an act is criminal by reason of its being done with a criminal knowledge or intention.

36. Whenever the causing of a certain effect, or an attempt to cause that effect, by an act or by an omission, is an offence, it is to be understood that the causing of that effect, partly by an act, and partly by an omission, is the same offence.

Illustration.

A intentionally causes Z's death, partly by illegally omitting to give Z food, and partly by beating Z: A has committed murder.

37. When an offence is committed by means of several acts, whoever intentionally co-operates in the commission of that offence by doing any one or those acts, either singly, or jointly with any other person, commits that offence.

Co-operation by doing one of several acts constituting an offence.

Illustrations.

(a.) *A and B agree to murder Z by severally, and at different times, giving him small doses of poison. A and B administer the poison according to the agreement with intent to murder Z. Z dies from the effects of the several doses of poison so administered to him: Here A and B intentionally co-operate in the commission of murder, and, as each of them does an act by which the death is caused, they are both guilty of the offence, though their acts are separate.*

(b.) *A and B are joint jailors, and, as such, have the charge of Z, a prisoner, alternately for six hours at a time. A and B, intending to cause Z's death, knowingly co-operate in causing that effect by illegally omitting,*

* S. 34 has been substituted for the original by the Indian Penal Code Amendment Act (XXVII. of 1870), s. 1.

each during the time of his attendance, to furnish *Z* with food supplied to them for that purpose. *Z* dies of hunger : Both *A* and *B* are guilty of the murder of *Z*.

(c.) *A*, a jailor, has the charge of *Z*, a prisoner. *A*, intending to cause *Z*'s death, illegally omits to supply *Z* with food, in consequence of which *Z* is much reduced in strength, but the starvation is not sufficient to cause his death. *A* is dismissed from his office, and *B* succeeds him. *B*, without collusion or co-operation with *A*, illegally omits to supply *Z* with food, knowing that he is likely thereby to cause *Z*'s death. *Z* dies of hunger : *B* is guilty of murder ; but, as *A* did not co-operate with *B*, *A* is guilty only of an attempt to commit murder.

38. Where several persons are engaged or concerned in the commission of a criminal act, they may be guilty of different offences by means of that act.

Persons concerned in criminal act may be guilty of different offences.

Illustration.

A attacks *Z* under such circumstances of grave provocation that his killing of *Z* would be only culpable homicide not amounting to murder. *B*, having ill-will towards *Z*, and intending to kill him, and not having been subject to the provocation, assists *A* in killing *Z* : Here, though *A* and *B* are both engaged in causing *Z*'s death, *B* is guilty of murder, and *A* is guilty only of culpable homicide.

39. A person is said to cause an effect " voluntarily " when he causes it by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it.

" Voluntarily. "

Illustration.

A sets fire by night to an inhabited house in a large town for the purpose of facilitating a robbery, and thus causes the death of a person : Here *A* may not have intended to cause death, and may even be sorry that death has been caused by his act ; yet, if he knew that he was likely to cause death, he has caused death voluntarily.

40.* Except in the chapter and sections mentioned in clauses two and three of this section, the word " offence " denotes a thing made punishable by this Code.

" Offence. "

* S. 40 has been substituted for the original by the Indian Penal Code Amendment Act (XXVII. of 1870), s. 2. The figures, 64, 65, 66, and 71 in the second clause of s. 40, have been inserted by the Indian Penal Code Amendment Act (VIII. of 1882), s. 1 ; and the figures ' 67 ' by the Indian Criminal Law Amendment Act (X. of 1886), s. 21 (1).

In Chapter IV., and in the following sections, namely, sections 64, 65, 66, 67, 71, 109, 110, 112, 114, 115, 116, 117, 187, 194, 195, 203, 211, 213, 214, 221, 222, 223, 224, 225, 327, 328, 329, 330, 331, 347, 348, 388, 389, and 445, the word "offence" denotes a thing punishable under this Code, or under any special or local law as hereinafter* defined;

and in sections 141, 176, 177, 201, 202, 212, 216, and 441, the word "offence" has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.

"Special law."

41. A "special law" is a law applicable to a particular subject.

"Local law."

42. A "local law" is a law applicable only to a particular part of British India.

43. The word "illegal" is applicable to everything which is an offence, or which is prohibited by law, or which furnishes ground for a civil action; and a person is said to be "legally bound to do" whatever it is illegal in him to omit.

"Illegal : "

"Legally bound to do."

44. The word "injury" denotes any harm whatever illegally caused to any person in body, mind, reputation, or property.

"Injury."

45. The word "life" denotes the life of a human being unless the contrary appears from the context.

"Life. "

46. The word "death" denotes the death of a human being unless the contrary appears from the context.

"Death. "

47. The word "animal" denotes any living creature other than a human being.

"Animal. "

48. The word "vessel" denotes anything made for the conveyance by water of human beings or of property.

"Vessel. "

In ss. 41 and 42.

49. Wherever the word "year" or the word "month" is used,
 "Year:" "Month."
 it is to be understood that the year or
 the month is to be reckoned according
 to the British calendar.

50. The word "section" denotes one of those portions of a
 "Section."
 chapter of this Code which are distin-
 guished by prefixed numeral figures.

51. The word "oath" includes a solemn affirmation substi-
 "Oath."
 tuted by law for an oath, and any decla-
 ration required or authorized by law to
 be made before a public servant, or to be used for the purpose
 of proof, whether in a Court of Justice or not.

52. Nothing is said to be done or believed in "good faith"
 "Good faith."
 which is done or believed without due
 care and attention.

CHAPTER III.

OF PUNISHMENTS.

53. The punishments to which of-
 "Punishment."
 fenders are liable under the provisions
 of this Code are—

first—death;
secondly—transportation;
thirdly—penal servitude;
fourthly—imprisonment,* which is of two descriptions,
 namely—
 (1) rigorous, that is, with hard labour;
 (2) simple;

* This definition of "imprisonment" applies in the case of all Acts of the Governor-General in Council made after the 3rd January 1868, and of all Regulations made under the Government of India Act, 1870 (Stat. 33 Vict., c. 3), after the 14th January 1887.—See the General Clauses Act (X. of 1897), ss. 3 (26) and 4 (1) and (2).

fifthly—forfeiture of property ;

sixthly—fine.*

54. In every case in which sentence of death shall have been passed, the Government of India or the Government of the place within which the offender shall have been sentenced may, without the consent of the offender, commute the punishment for any other punishment provided by this Code.

55. In every case in which sentence of transportation for life shall have been passed, the Government of India or the Government of the place within which the offender shall have been sentenced may, without the consent of the offender, commute the punishment for imprisonment of either description for a term not exceeding fourteen years.

56. Whenever any person, being a European or American, is convicted of an offence punishable under this Code with transportation, the Court shall sentence the offender to penal servitude, instead of transportation, according to the provisions of Act XXIV. of 1855 :

† Provided that, where a European or American offender would, but for such Act, be liable to be sentenced or ordered to be transported for a term exceeding ten years, but not for life, he shall be liable to be sentenced or ordered to be kept in penal servitude for such term exceeding six years as to the Court seems fit, but not for life.

57. In calculating fractions of terms of punishment, transportation for life shall be reckoned as equivalent to transportation for twenty years.

* For power to pass sentence of fine in a case referred to a Council of Elders in a Punjab Frontier District or in Baluchistan, *see* the Punjab Frontier Crimes Regulation (IV. of 1887), s. 14.

As to punishment of whipping generally, *see* now the Whipping Act (IV. of 1909) ; in Upper Burma, *see* the Burma Laws Act (XIII. of 1898), s. 3 (b) and Sch. III. ; and, in the Punjab Frontier Districts and Baluchistan, *see* the Punjab Frontier Crimes Regulation (IV. of 1887), ss. 8, 14 (2).

† This proviso has been added by the Indian Penal Code Amendment Act (XXVII. of 1870), s. 3.

58. In every case in which a sentence of transportation is passed, the offender, until he is transported, shall be dealt with in the same manner as if sentenced to rigorous imprisonment, and shall be held to have been undergoing his sentence of transportation during the term of his imprisonment.

59. In every case in which an offender is punishable with imprisonment for a term of seven years or upwards, it shall be competent to the Court which sentences such offender, instead of awarding sentence of imprisonment, to sentence the offender to transportation for a term not less than seven years, and not exceeding the term for which, by this Code, such offender is liable to imprisonment.

60.* In every case in which an offender is punishable with imprisonment which may be of either description, it shall be competent to the Court which sentences such offender to direct in the sentence that such imprisonment shall be wholly rigorous, or that such imprisonment shall be wholly simple, or that any part of such imprisonment shall be rigorous and the rest simple.

61. In every case in which a person is convicted of an offence for which he is liable to forfeiture of all his property, the offender shall be incapable of acquiring any property, except for the benefit of Government, until he shall have undergone the punishment awarded or the punishment to which it shall have been commuted, or until he shall have been pardoned.

Illustration.

A, being convicted of waging war against the Government of India, is liable to forfeiture of all his property. After the sentence, and whilst the same is in force, *A*'s father dies, leaving an estate which, but for the forfeiture, would become the property of *A*: The estate becomes the property of Government.

62. Whenever any person is convicted of an offence punishable with death, the Court may adjudge that all his property, moveable and immoveable, shall be forfeited to Government; and whenever any person shall

* As to the application of s. 60 and ss. 63 to 74 to sentences passed in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), ss. 15 (2), 52.

be convicted of any offence for which he shall be transported or sentenced to imprisonment for a term of seven years or upwards, the Court may adjudge that the rents and profits of all his moveable and immoveable estate, during the period of his transportation or imprisonment, shall be forfeited to Government, subject to such provision for his family and dependants as the Government may think fit to allow during such period.

63.* Where no sum is expressed to which a fine may extend, the amount of fine to which the offender is liable is unlimited, but shall not be excessive.

64.* "In every case of an offence punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment;

"and in every case of an offence punishable *with imprisonment or fine*, or with fine only, in which the offender is sentenced to a fine;"

it shall be competent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced, or to which he may be liable under a commutation of a sentence.

* The provisions of ss. 63 and 64 apply to all fines imposed under the authority of any Act, Regulation, rule, or bye-law, unless the Act, Regulation, rule, or bye-law contains an express provision to the contrary.—See the General Clauses Act (X. of 1897), s. 25.

As to the application of ss. 63 and 64 to sentences passed in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), ss. 15 (2), 52.

As to the application of s. 64 to offences under special or local laws, see s. 40, *supra*.

In s. 64, the first two clauses quoted (except the words italicized) have been substituted by the Indian Penal Code Amendment Act (VIII. of 1882), s. 2, for the words, "In every case in which an offender is sentenced to fine." They do not apply in the case of hill-tribes to which the Kachin Hill-tribes Regulation (I. of 1895) is applied.—See ss. 1 (3) and 3 of that Regulation.

In s. 64, the words italicized have been inserted by the Indian Criminal Law Amendment Act (X. of 1886), s. 21 (2).

65.* The term for which the Court directs the offender to be imprisoned in default of payment of a fine shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence if the offence be punishable with imprisonment as well as fine.

Limit to imprisonment for non-payment of fine when imprisonment and fine awardable.

66.* The imprisonment which the Court imposes in default of payment of a fine may be of any description to which the offender might have been sentenced for the offence.

Description of imprisonment for non-payment of fine.

67.* If the offence be punishable with fine only, "the imprisonment which the Court imposes in default of payment of the fine shall be simple, and" the term for which the Court directs the offender to be imprisoned in default of payment of fine shall not exceed the following scale, that is to say, *for any term not exceeding two months when the amount of the fine shall not exceed fifty rupees, and for any term not exceeding four months when the amount shall not exceed one hundred rupees, and for any term not exceeding six months in any other case.*

Imprisonment for non-payment of fine when offence punishable with fine only.

* The provisions of ss. 65 to 67 apply to all fines imposed under the authority of any Act, Regulation, rule, or bye-law, unless the Act, Regulation, rule, or bye-law contains an express provision to the contrary.—See the General Clauses Act (X. of 1897), s. 25.

As to the application of ss. 65 to 67 to sentences passed in a Punjab Frontier District or in Baluchistan, *see* the Punjab Frontier Crimes Regulation (IV. of 1887), ss. 15 (2), 52.

As to the application of ss. 65 to 67 to offences under special or local laws, *see* s. 40, *supra*.

In s. 67 the words quoted have been inserted by the Indian Penal Code Amendment Act (VIII. of 1882), s. 3.

In the case of hill-tribes to which the Kachin Hill-tribes Regulation (I. of 1895) is applied, the following words have been substituted for the portion italicized in s. 67 :—

"For any term not exceeding four months when the amount of the fine shall not exceed fifty rupees, and for any term not exceeding eight months when the amount shall not exceed one hundred rupees, and for any term not exceeding twelve months in any other case."—See the Kachin Hill-tribes Regulation (I. of 1895), ss. 1 (3) and 3.

This substitution is also made in the case of the hill-tribes to which the Chin Hills Regulation (V. of 1896) is applied.—See Regulation V. of 1896, s. 3 and Schedule.

68.* The imprisonment which is imposed in default of payment of a fine shall terminate whenever that fine is either paid or levied by process of law.

Imprisonment to terminate on payment of fine.

69.* If, before the expiration of the term of imprisonment fixed in default of payment, such a proportion of the fine be paid or levied that the term of imprisonment suffered in default of payment is not less than proportional to the part of the fine still unpaid, the imprisonment shall terminate.

Termination of imprisonment on payment of proportional part of fine.

Illustration.

A is sentenced to a fine of one hundred rupees, and to four months' imprisonment in default of payment: Here, if seventy-five rupees of the fine be paid or levied before the expiration of one month of the imprisonment, *A* will be discharged as soon as the first month has expired. If seventy-five rupees be paid or levied at the time of the expiration of the first month, or at any later time while *A* continues in imprisonment, *A* will be immediately discharged. If fifty rupees of the fine be paid or levied before the expiration of two months of the imprisonment, *A* will be discharged as soon as the two months are completed. If fifty rupees be paid or levied at the time of the expiration of those two months, or at any later time while *A* continues in imprisonment, *A* will be immediately discharged.

70.* The fine or any part thereof which remains unpaid may be levied at any time within six years after the passing of the sentence, and, if, under the sentence, the offender be liable to imprisonment for a longer period than six years, then at any time previous to the expiration of that period; and the death of the offender does not discharge from the liability any property which would, after his death, be legally liable for his debts.

Fine leviable within six years, or during imprisonment.

Death not to discharge offender from the property from liability.

* The provisions of ss. 68 to 70 apply to all fines imposed under the authority of any Act, Regulation, rule, or bye-law unless the Act, Regulation, rule, or bye-law contains an express provision to the contrary.—*See the General Clauses Act (X. of 1897), s. 25.*

As to the application of ss. 68 to 70 to sentences passed in a Punjab Frontier District or in Baluchistan, *see the Punjab Frontier Crimes Regulation (IV. of 1887,) ss. 15 (2), 52.*

71.* Where anything which is an offence is made up of parts, Limit of punishment of any of which parts is itself an offence, offence made up of several the offender shall not be punished with offences. the punishment of more than one of such his offences unless it be so expressly provided.

“ Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or

“ where several acts, of which one or more than one would, by itself or themselves, constitute an offence, constitute, when combined; a different offence,

“ the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences.”

Illustrations.

(a.) *A* gives *Z* fifty strokes with a stick : Here *A* may have committed the offence of voluntarily causing hurt to *Z* by the whole beating, and also by each of the blows which make up the whole beating. If *A* were liable to punishment for every blow, he might be imprisoned for fifty years, one for each blow. But he is liable only to one punishment for the whole beating.

(b.) But, if, while *A* is beating *Z*, *Y* interferes, and *A* intentionally strikes *Y*, here, as the blow given to *Y* is no part of the act whereby *A* voluntarily causes hurt to *Z*, *A* is liable to one punishment for voluntarily causing hurt to *Z*, and another for the blow given to *Y*.

72.* In all cases in which judgment is given that a person is Punishment of person guilty of one of several offences specified in the judgment, but that it is doubtful of which of those offences he is guilty, the offender shall be punished for the offence for which the lowest punishment is provided if the same punishment is not provided for all.

* In s. 71, the clauses quoted have been added by the Indian Penal Code Amendment Act (VIII. of 1882), s. 4.

As to the application of s. 71 to offences under special or local laws, see s. 40, *supra*.

Separable offences, which come within the provisions of s. 71, are not “ distinct offences ” within the meaning of s. 35 of the Code of Criminal Procedure (Act V. of 1898).

As to the application of ss. 71 and 72 to sentences passed in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), ss. 15 (2), 52.

73.* Whenever any person is convicted of an offence for which, under this Code, the Court has power to sentence him to rigorous imprisonment, the Court may, by its sentence, order that the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole, according to the following scale, that is to say—

a time not exceeding one month if the term of imprisonment shall not exceed six months ;

a time not exceeding two months if the term of imprisonment shall exceed six months, and “shall not exceed one”† year ;

a time not exceeding three months if the term of imprisonment shall exceed one year.

74.* In executing a sentence of solitary confinement, such confinement shall, in no case, exceed fourteen days at a time, with intervals between the periods of solitary confinement of not less duration than such periods ; and, when the imprisonment awarded shall exceed three months, the solitary confinement awarded shall not exceed seven days, in any one month, of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods.

Enhanced punishment for certain offences under Ch. XII. or Ch. XVII. after previous conviction.

75.‡ Whoever, having been convicted,—

* As to the application of ss. 73 and 74 to sentences passed in a Punjab Frontier District or in Baluchistan, *see* the Punjab Frontier Crimes Regulation (IV. of 1887), ss. 15 (2), 52.

† In s. 73, the words quoted have been substituted by the Indian Penal Code Amendment Act (VIII. of 1882), s. 5, for the words “be less than a.”

‡ S. 75 has been substituted for the original s. 75 by Act III. of 1910.

In its application to hill tribes to which the Kachin Hill-tribes Regulation (I. of 1895) is applied [*see* ss. 1 (3) and 3 of that Regulation], the Code is to be read as if the following additional section were inserted after s. 75 :—

“75A. Notwithstanding anything in this Code, or in any other enactment for the time being in force, a person convicted of any offence punishable under this Code, or under any other enactment, shall be punishable with fine in lieu of, or in addition to, any other punishment to which he may be liable.”

In the Chin Hills, the Code is to be read as if a section similar to the preceding, save a few verbal differences, and similarly numbered, were inserted.—*See* the Chin Hills Regulation (V. of 1896.)

(a) by a Court in British India, of an offence punishable under Chapter XII. or Chapter XVII. of this Code, with imprisonment of either description for a term of three years or upwards, or,

(b) by a Court or tribunal in the territories of any Native Prince or State in India acting under the general or special authority of the Governor-General in Council, or of any Local Government, of an offence which would, if committed in British India, have been punishable, under those Chapters of this Code, with like imprisonment for the like term,

shall be guilty of any offence punishable, under either of those Chapters, with like imprisonment for the like term, shall be subject, for every such subsequent offence, to transportation for life, or to imprisonment of either description for a term which may extend to ten years.

CHAPTER IV.*

GENERAL EXCEPTIONS.

76. Nothing is an offence which is done by a person who is, or who, by reason of a mistake of fact, and not by reason of a mistake of law, in good faith believes himself to be bound by law to do it.

Act done by a person bound, or by mistake of fact believing himself bound, by law.

Illustrations.

(a.) A, a soldier, fires on a mob by the order of his superior officer in conformity with the commands of the law: A has committed no offence.

(b.) A, an officer of a Court of Justice, being ordered by that Court to arrest Y, and, after due enquiry, believing Z to be Y, arrests Z: A has committed no offence.

77. Nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law.

* Ch. IV. applies to offences punishable under ss. 121A, 124A, 225A, 225B, 294A, and 304A.—See the Indian Penal Code Amendment Act (XXVII. of 1870), s. 13, as amended by the Repealing and Amending Act (XII. of 1891). As to the application of Chapter IV. to offences under special or local laws, see s. 40, *supra*.

78. Nothing which is done in pursuance of, or which is Act done pursuant to the warranted by, the judgment or order of judgment or order of Court. a Court of Justice, if done whilst such judgment or order remains in force, is an offence, notwithstanding the Court may have had no jurisdiction to pass such judgment or order, provided the person doing the act in good faith believes that the Court had such jurisdiction.

79. Nothing is an offence which is done by any person who is justified by law, or who, by reason of a mistake of fact, and not by reason of a mistake of law, in good faith believes himself to be justified by law, in doing it.

Act done by a person justified, or by mistake of fact believing himself justified, by law.

Illustration.

A sees Z commit what appears to A to be a murder. A, in the exercise to the best of his judgment exerted in good faith, of the power which the law gives to all persons of apprehending murderers in the act, seizes Z in order to bring Z before the proper authorities: A has committed no offence though it may turn out that Z was acting in self-defence.

80. Nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge, in the doing of a lawful act in a lawful manner by lawful means, and with proper care and caution.

Accident in doing a lawful act.

Illustration.

A is at a work with a hatchet: the head flies off and kills a man who is standing by: Here, if there was no want of proper caution on the part of A, his act is excusable, and not an offence.

81. Nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without any criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property.

Act likely to cause harm, but done without criminal intent, and to prevent other harm.

Explanation.—It is a question of fact in such a case whether the harm to be prevented or avoided was of such a nature, and so imminent, as to justify or excuse the risk of doing the act with the knowledge that it was likely to cause harm.

Illustrations.

(a) A, the captain of a steam-vessel, suddenly, and without any fault or negligence on his part, finds himself in such a position that, before he

can stop his vessel, he must inevitably run down a boat, *B*, with 20 or 30 passengers on board, unless he changes the course of his vessel; and that, by changing his course, he must incur risk of running down a boat, *C*, with only two passengers on board, which he may possibly clear: Here, if *A* alters his course without any intention to run down the boat *C*, and in good faith for the purpose of avoiding the danger to the passengers in the boat *B*, he is not guilty of an offence, though he may run down the boat *C* by doing an act which he knew was likely to cause that effect, if it be found as a matter of fact that the danger which he intended to avoid was such as to excuse him in incurring the risk of running down *C*.

(*b.*) *A*, in a great fire, pulls down houses in order to prevent the conflagration from spreading. He does this with the intention, in good faith, of saving human life or property: Here, if it be found that the harm to be prevented was of such a nature and so imminent as to excuse *A*'s act, *A* is not guilty of the offence.

Act of a child under seven years of age.

82. Nothing is an offence * which is done by a child under seven years of age.

83. Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

84. Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

85. Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law, provided that the thing which intoxicated him was administered to him without his knowledge, or against his will.

86. In cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated unless the

* See, however, the Indian Railways Act (IX. of 1890), s. 130, as to offences committed by children against certain provisions of that Act.

thing which intoxicated him was administered to him without his knowledge, or against his will.

87.* Nothing which is not intended to cause death or grievous hurt, and which is not known by the doer to be likely to cause death or grievous hurt, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, to any person above eighteen years of age, who has given consent, whether express or implied, to suffer that harm; or by reason of any harm which it may be known by the doer to be likely to cause to any such person who has consented to take the risk of that harm.

Illustration.

A and *Z* agree to fence with each other for amusement. This agreement implies the consent of each to suffer any harm which, in the course of such fencing, may be caused without foul play; and if *A*, while playing, fairly hurts *Z*, *A* commits no offence.

88.* Nothing, which is not intended to cause death, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit† it is done in good faith, and who has given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm.

Illustration.

A, a surgeon, knowing that a particular operation is likely to cause the death of *Z*, who suffers under a painful complaint, but not intending to cause *Z*'s death, and intending, in good faith, *Z*'s benefit, performs that operation on *Z* with *Z*'s consent: *A* has committed no offence.

89.* Nothing which is done in good faith for the benefit of a person under twelve years of age, or of unsound mind, by, or by consent, either express or implied, of, the guardian or other person having lawful charge of

* For exceptions to ss. 87, 88, 89, see s. 91, *infra*.

† Pecuniary benefit is not "benefit" within the meaning of these sections.—See s. 92 (*Expl.*), *infra*.

that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to that person :

Provisos.

Provided—

firstly, that this exception shall not extend to the intentional causing of death, or to the attempting to cause death :

secondly, that this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity :

thirdly, that this exception shall not extend to the voluntary causing of grievous hurt, or to the attempting to cause grievous hurt, unless it be for the purpose of preventing death or grievous hurt, or the curing of any grievous disease or infirmity :

fourthly, that this exception shall not extend to the abetment of any offence to the committing of which offence it would not extend.

Illustration.

A, in good faith, for his child's benefit, without his child's consent, has his child cut for the stone by a surgeon, knowing it to be likely that the operation will cause the child's death, but not intending to cause the child's death : A is within the exception, inasmuch as his object was the cure of the child.

90. A consent is not such a consent as is intended by any section of this Code if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception ; or

if the consent is given by a person who, from unsoundness of mind or intoxication, is unable to understand the nature and consequence of that to which he gives his consent ; or,

unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.

91. The exceptions in sections 87, 88, and 89 do not extend to acts which are offences independently of any harm which they may cause, or be intended to cause, or be known to be harm caused.

likely to cause, to the person giving the consent, or on whose behalf the consent is given.

Illustration.

Causing miscarriage (unless caused in good faith for the purpose of saving the life of the woman) is an offence independently of any harm which it may cause, or be intended to cause, to the woman. Therefore it is not an offence "by reason of such harm," and the consent of the woman or of her guardian to the causing of such miscarriage does not justify the act.

92. Nothing is an offence by reason of any harm which it may cause to a person for whose benefit* it is done in good faith, even without that person's consent, if the circumstances are such that it is impossible for that person to signify consent, or if that person is incapable of giving consent, and has no guardian or other person in lawful charge of him from whom it is possible to obtain consent in time for the thing to be done with benefit :

Provisos.

Provided—

first, that this exception shall not extend to the intentional causing of death, or the attempting to cause death :

secondly, that this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity :

thirdly, that this exception shall not extend to the voluntary causing of hurt, or to the attempting to cause hurt, for any purpose other than the preventing of death or hurt :

fourthly, that this exception shall not extend to the abetment of any offence to the committing of which offence it would not extend.

Illustrations.

(a.) Z is thrown from his horse, and is insensible. A, a surgeon, finds that Z requires to be trepanned. A, not intending Z's death, but in good faith, for Z's benefit, performs the trepan before Z recovers his power of judging for himself : A has committed no offence.

* Pecuniary benefit is not "benefit" within the meaning of this section.—See *Expl.* to this section, *infra*.

(b.) *Z* is carried off by a tiger. *A* fires at the tiger, knowing it to be likely that the shot may kill *Z*, but not intending to kill *Z*, and in good faith intending *Z*'s benefit. *A*'s ball gives *Z* a mortal wound : *A* has committed no offence.

(c.) *A*, a surgeon, sees a child suffer an accident which is likely to prove fatal unless an operation be immediately performed. There is not time to apply to the child's guardian. *A* performs the operation in spite of the entreaties of the child, intending, in good faith, the child's benefit : *A* has committed no offence.

(d.) *A* is in a house which is on fire with *Z* a child. People below hold out a blanket. *A* drops the child from the house-top, knowing it to be likely that the fall may kill the child, but not intending to kill the child, and intending, in good faith, the child's benefit : Here, even if the child is killed by the fall, *A* has committed no offence.

Explanation.—Mere pecuniary benefit is not benefit within the meaning of sections 88, 89, and 92.

93. No communication made in good faith is an offence by
 Communication made in reason of any harm to the person to
 good faith. whom it is made if it is made for the
 benefit of that person.

Illustration.

A, a surgeon, in good faith, communicates to a patient his opinion that he cannot live. The patient dies in consequence of the shock : *A* has committed no offence, though he knew it to be likely that the communication might cause the patient's death.

94. Except murder and offences against the State, punish-
 Act to which a person is able with death, nothing is an offence
 compelled by threats. which is done by a person who is com-
 pelled to do it by threats, which, at the time of doing it, reasonably
 cause the apprehension that instant death to that person will other-
 wise be the consequence : provided the person doing the act did
 not of his own accord, or from a reasonable apprehension of harm
 to himself short of instant death, place himself in the situation by
 which he became subject to such constraint.

Explanation 1.—A person who, of his own accord, or by reason of a threat of being beaten, joins a gang of dacoits, knowing their character, is not entitled to the benefit of this exception on the ground of his having been compelled by his associates to do anything that is an offence by law.

Explanation 2.—A person seized by a gang of dacoits, and forced, by threat of instant death, to do a thing which is an offence by law, for example, a smith compelled to take his tools, and to

force the door of a house for the decoits to enter and plunder it, is entitled to the benefit of this exception.

95. Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.

Of the Right of Private Defence.

96. Nothing is an offence which is done in the exercise of the right of private defence.

Things done in private defence.

97. Every person has a right, subject to the restrictions contained in section 99, to defend—

Right of private defence of the body, and of property.

first—his own body and the body of any other person against any offence affecting the human body;

secondly—the property, whether moveable or immoveable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief, or criminal trespass, or which is an attempt to commit theft, robbery, mischief, or criminal trespass.

98. When an act, which would otherwise be a certain offence, is not that offence by reason of the youth, the want of maturity of understanding, the unsoundness of mind, or the intoxication of the person doing that act, or by reason of any misconception on the part of that person, every person has the same right of private defence against that act which he would have if the act were that offence.

Right of private defence against the act of a person of unsound mind, &c.

Illustrations.

(a.) Z, under the influence of madness, attempts to kill A : Z is guilty of no offence. But A has the same right of private defence which he would have if Z were sane.

(b.) A enters by night a house which he is legally entitled to enter. Z in good faith, taking A for a house-breaker, attacks A : Here Z, by attacking A under this misconception, commits no offence. But A has the same right of private defence against Z which he would have if Z were not acting under that misconception.

99. There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt if done or attempted to be done by a public servant acting in good faith under colour of his office, though that act may not be strictly justifiable by law.

There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt if done or attempted to be done by the direction of a public servant acting in good faith under colour of his office, though that direction may not be strictly justifiable by law.

There is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities.

The right of private defence in no case extends to the infliction of more harm than it is necessary to inflict for the purpose of defence.

Explanation 1.—A person is not deprived of the right of private defence against an act done or attempted to be done by a public servant, as such, unless he knows or has reason to believe that the person doing the act is such public servant.

Explanation 2.—A person is not deprived of the right of private defence against an act done or attempted to be done by the direction of a public servant unless he knows or has reason to believe that the person doing the act is acting by such direction, or unless such person states the authority under which he acts, or, if he has authority in writing, unless he produces such authority if demanded.

100. The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death, or of any other harm, to the assailant if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely—

first—such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;

secondly—such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;

thirdly—an assault with the intention of committing rape;

fourthly—an assault with the intention of gratifying unnatural lust ;

fifthly—an assault with the intention of kidnapping or abducting ;

sixthly—an assault with the intention of wrongfully confining a person under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

101. If the offence be not of any of the descriptions enumerated in the last-preceding section, the right of private defence of the body does not extend to the voluntary causing of death to the assailant, but does extend, under the restrictions mentioned in section 99, to the voluntary causing to the assailant of any harm other than death.

102. The right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence, though the offence may not have been committed, and it continues as long as such apprehension of danger to the body continues.

103. The right of private defence of property extends, under the restrictions mentioned in section 99, to the voluntary causing of death, or of any other harm to the wrong-doer, if the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right, be an offence of any of the descriptions hereinafter enumerated, namely—

first—robbery :

secondly—house-breaking by night :

thirdly—mischief by fire committed on any building, tent, or vessel, which building, tent, or vessel is used as a human dwelling, or as a place for the custody of property :

fourthly—theft, mischief, or house-trespass under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence if such right of private defence is not exercised.

104. If the offence, the committing of which, or the attempt-
 When such right extends ing to commit which, occasions the
 to causing any harm other exercise of the right of private defence,
 than death. be theft, mischief, or criminal trespass,
 not of any of the descriptions enumerated in the last-preceding
 section, that right does not extend to the voluntary causing of
 death, but does extend, subject to the restrictions mentioned in
 section 99, to the voluntary causing to the wrong-doer of any harm
 other than death.

105. The right of private defence
 Commencement and con- of property commences when a reason-
 tinuance of the right of able apprehension of danger to the pro-
 private defence of property. perty commences.

The right of private defence of property against theft conti-
 nues till the offender has effected his retreat with the property, or
 either the assistance of the public authorities is obtained, or the
 property has been recovered.

The right of private defence of property against robbery conti-
 nues as long as the offender causes or attempts to cause to any
 person death or hurt or wrongful restraint, or as long as the fear
 of instant death, or of instant hurt, or of instant personal restraint,
 continues.

The right of private defence of property against criminal
 trespass or mischief continues as long as the offender continues in
 the commission of criminal trespass or mischief.

The right of private defence of property against house-break-
 ing by night continues as long as the house-trespass which has
 been begun by such house-breaking continues.

106. If, in the exercise of the right of private defence against
 an assault which reasonably causes the
 Right of private defence apprehension of death, the defender be
 against deadly assault when so situated that he cannot effectually
 there is risk of harm to inno- exercise that right without risk of harm
 cent person. to an innocent person, his right of private defence extends to the
 running of that risk.

Illustration.

A is attacked by a mob who attempts to murder him. He cannot
 effectually exercise his right of private defence without firing on the mob,
 and he cannot fire without risk of harming young children who are mingled
 with the mob : A commits no offence if, by so firing, he harms any of the
 children.

CHAPTER V.*

OF ABETMENT.

107. A person abets the doing of a thing who—

Abetment of a thing.

first—instigates any person to do that thing ; or,

secondly—engages, with one or more other person or persons, in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing ; or,

thirdly—intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Illustration.

A, a public officer, is authorized by a warrant from a Court of Justice to apprehend *Z*. *B*, knowing that fact, and also that *C* is not *Z*, wilfully represents to *A* that *C* is *Z*, and thereby intentionally causes *A* to apprehend *C*: Here *B* abets by instigation the apprehension of *C*.

Explanation 2.—Whoever, either prior to, or at the time of, the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

108. A person abets an offence who abets either the commission of an offence, or the commission of an act which would be an offence if

Abettor.

* Ch. V. applies to offences punishable under ss. 121A, 124A, 225A, 225B, 294A, and 304A.—See the Indian Penal Code Amendment Act (XXVII. of 1870), s. 13, as amended by the Repealing and Amending Act (XII. of 1891).

The definition of "abet" here given applies in the case of all Acts of the Governor-General in Council and Regulations under "the Government of India Act, 1870" (Stat. 33 Vict., c. 3), s. 1, made after the 14th January 1887.—See the General Clauses Act (X. of 1897), ss. 3 (1), 4 (2).

As to the application of ss. 109, 110, 112, and 114 to 117 to offences under special or local laws, see s. 40, *supra*.

The abetment of certain offences is compoundable.—See the Code of Criminal Procedure (Act V. of 1898), Sch. II.

committed by a person capable by law of committing an offence, with the same intention or knowledge as that of the abettor.

Explanation 1.—The abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be bound to do that act.

Explanation 2.—To constitute the offence of abetment, it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

Illustrations.

(a.) *A* instigates *B* to murder *C*. *B* refuses to do so : *A* is guilty of abetting *B* to commit murder.

(b.) *A* instigates *B* to murder *D*. *B*, in pursuance of the instigation, stabs *D*. *D* recovers from the wound : *A* is guilty of instigating *B* to commit murder.

Explanation 3.—It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.

Illustrations.

(a.) *A*, with a guilty intention, abets a child or a lunatic to commit an act which would be an offence if committed by a person capable by law of committing an offence, and having the same intention as *A* : Here *A*, whether the act be committed or not, is guilty of abetting an offence

(b.) *A*, with the intention of murdering *Z*, instigates *B*, a child under seven years of age, to do an act which causes *Z*'s death. *B*, in consequence of the abetment, does the act in the absence of *A*, and thereby causes *Z*'s death : Here, though *B* was not capable by law of committing an offence, *A* is liable to be punished in the same manner as if *B* had been capable by law of committing an offence, and had committed murder, and he is, therefore, subject to the punishment of death.

(c.) *A* instigates *B* to set fire to a dwelling-house. *B*, in consequence of the unsoundness of his mind, being incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law, sets fire to the house in consequence of *A*'s instigation : *B* has committed no offence, but *A* is guilty of abetting the offence of setting fire to a dwelling-house, and is liable to the punishment provided for that offence.

(d.) *A*, intending to cause a theft to be committed, instigates *B* to take property belonging to *Z* out of *Z*'s possession. *A* induces *B* to believe that the property belongs to *A*. *B* takes the property out of *Z*'s possession, in good faith believing it to be *A*'s property : *B*, acting under this misconception, does not take dishonestly, and therefore does not commit theft. But *A* is guilty of abetting theft, and is liable to the same punishment as if *B* had committed theft.

Explanation 4.—The abetment of an offence being an offence, the abetment of such an abetment is also an offence.

Illustration.

A instigates *B* to instigate *C* to murder *Z*. *B* accordingly instigates *C* to murder *Z*, and *C* commits that offence in consequence of *B*'s instigation: *B* is liable to be punished for his offence with the punishment for murder; and, as *A* instigates *B* to commit the offence, *A* is also liable to the same punishment.

Explanation 5.—It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it. It is sufficient if he engage in the conspiracy in pursuance of which the offence is committed.

Illustration.

A concerts with *B* a plan for poisoning *Z*. It is agreed that *A* shall administer the poison. *B* then explains the plan to *C* mentioning that a third person is to administer the poison, but without mentioning *A*'s name. *C* agrees to procure the poison, and procures and delivers it to *B* for the purpose of its being used in the manner explained. *A* administers the poison. *Z* dies in consequence: Here, though *A* and *C* have not conspired together, yet *C* has been engaged in the conspiracy in pursuance of which *Z* has been murdered. *C* has, therefore, committed the offence defined in this section, and is liable to the punishment for murder.

108A * A person abets an offence within the meaning of this Code who, in British India, abets offences outside it. the commission of any act without and beyond British India which would constitute an offence if committed in British India.

Illustration.

A, in British India, instigates *B*, a foreigner in Goa, to commit a murder in Goa: *A* is guilty of abetting murder.

109.† Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Punishment of abetment if the act abetted is committed in consequence, and where no express provision is made for its punishment.

* S. 108A has been added by the Indian Penal Code Amendment Act (IV. of 1898), s. 3. As to the authority for instituting prosecutions under s. 108A, see the Code of Criminal Procedure (Act V. of 1898), s. 196.

† As to the application of s. 109 to offences under special or local laws, see s. 40, *supra*.

Explanation.—An act or offence is said to be committed in consequence of abetment when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

Illustrations.

(a.) *A* offers a bribe to *B*, a public servant, as a reward for showing *A* some favour in the exercise of *B*'s official functions. *B* accepts the bribe: *A* has abetted the offence defined in section 161.

(b.) *A* instigates *B* to give false evidence. *B*, in consequence of the instigation, commits that offence: *A* is guilty of abetting that offence, and is liable to the same punishment as *B*.

(c.) *A* and *B* conspire to poison *Z*. *A*, in pursuance of the conspiracy, procures the poison, and delivers it to *B* in order that he may administer it to *Z*. *B*, in pursuance of the conspiracy, administers the poison to *Z* in *A*'s absence, and thereby causes *Z*'s death: Here *B* is guilty of murder. *A* is guilty of abetting that offence by conspiracy, and is liable to the punishment for murder.

110.* Whoever abets the commission of an offence shall, if the person abetted does the act with a different intention or knowledge from that of the abettor, be punished with the punishment provided for the offence which would have been committed if the act had been done with the intention or knowledge of the abettor, and with no other.

111. When an act is abetted, and a different act is done, the abettor is liable for the act done in the same manner, and to the same extent, as if he had directly abetted it:

Liability of abettor when one act abetted, and different act done.

Provided the act done was a probable consequence of the abetment, and was committed under the influence of the instigation, or with the aid, or in pursuance of the conspiracy, which constituted the abetment.

Proviso.

Illustrations.

(a.) *A* instigates a child to put poison into the food of *Z*, and gives him poison for that purpose. The child, in consequence of the instigation, by mistake, puts the poison into the food of *Y*, which is by the side of that of *Z*: Here, if the child was acting under the influence of *A*'s instigation, and the act done was under the circumstances, a probable consequence of

* As to the application of s. 110 to offences under special or local laws, see s. 40, *supra*.

the abetment, *A* is liable in the same manner, and to the same extent, as if he had instigated the child to put the poison into the food of *Y*.

(*b.*) *A* instigates *B* to burn *Z*'s house. *B* sets fire to the house, and, at the same time, commits theft of property there: *A*, though guilty of abetting the burning of the house, is not guilty of abetting the theft, for the theft was a distinct act, and not a probable consequence of the burning.

(*c.*) *A* instigates *B* and *C* to break into an inhabited house at midnight for the purpose of robbery, and provides them with arms for that purpose. *B* and *C* break into the house, and, being resisted by *Z*, one of the inmates, murder *Z*: Here, if the murder was the probable consequence of the abetment, *A* is liable to the punishment provided for murder.

112.* If the act for which the abettor is liable under the last-
 preceding section is committed in ad-
 Abettor when liable to cumulative punishment for act abetted, and for act done. dition to the act abetted, and constitutes a distinct offence, the abettor is liable to punishment for each of the offences.

Illustration

A instigates *B* to resist by force a distress made by a public servant. *B* in consequence, resists that distress. In offering the resistance, *B* voluntarily causes grievous hurt to the officer executing the distress. As *B* has committed both the offence of resisting the distress and the offence of voluntarily causing grievous hurt, *B* is liable to punishment for both these offences; and, if *A* knew that *B* was likely voluntarily to cause grievous hurt in resisting the distress, *A* will also be liable to punishment for each of the offences.

113. When an act is abetted with the intention on the part of
 the abettor of causing a particular effect,
 Liability of abettor for an effect caused by the act abetted different from that intended by the abettor. and an act for which the abettor is liable in consequence of the abetment causes a different effect from that intended by the abettor, the abettor is liable for the effect caused in the same manner, and to the same extent, as if he had abetted the act with the intention of causing that effect, provided he knew that the act abetted was likely to cause that effect.

Illustration.

A instigates *B* to cause grievous hurt to *Z*. *B*, in consequence of the instigation, causes grievous hurt to *Z*. *Z* dies in consequence: Here, if *A* knew that the grievous hurt abetted was likely to cause death, *A* is liable to be punished with the punishment provided for murder.

* As to the application of s. 112 to offences under special or local laws see s. 40, *supra*.

114.* Whenever any person, who, if absent, would be liable to be punished as an abettor, is present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence.

115.* Whoever abets the commission of an offence punishable with death or transportation for life shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ;

and if any act for which the abettor is liable in consequence of the abetment, and which causes hurt to any person, is done, the abettor shall be liable to imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

Illustration.

A instigates B to murder Z. The offence is not committed. If B had murdered Z, he would have been subject to the punishment of death or transportation for life. Therefore A is liable to imprisonment for a term which may extend to seven years, and also to a fine ; and if any hurt be done to Z in consequence of the abetment, he will be liable to imprisonment for a term which may extend to fourteen years, and to fine.

116.* Whoever abets an offence punishable with imprisonment shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of any description provided for that offence for a term which may extend to one-fourth part of the longest term provided for that offence, or with such fine as is provided for that offence, or with both ;

and, if the abettor or the person abetted is a public servant whose duty it is to prevent the commission of such offence, the abettor shall be punished with imprisonment of any des-

* As to the application of ss. 114 to 116 to offences under special or local laws, see s. 40, *supra*.

cription provided for that offence for a term which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.

Illustrations.

(a.) *A* offers a bribe to *B*, a public servant, as a reward for showing *A* some favour in the exercise of *B*'s official functions. *B* refuses to accept the bribe: *A* is punishable under this section.

(b.) *A* instigates *B* to give false evidence: Here, if *B* does not give false evidence, *A* has nevertheless committed the offence defined in this section, and is punishable accordingly.

(c.) *A*, a police-officer whose duty it is to prevent robbery, abets the commission of robbery: Here, though the robbery be not committed, *A* is liable to one-half of the longest term of imprisonment provided for that offence, and also to fine.

(d.) *B* abets the commission of a robbery by *A*, a police-officer whose duty it is to prevent that offence. Here, though the robbery be not committed, *B* is liable to one-half of the longest term of imprisonment provided for the offence of robbery, and also to fine.

117.* Whoever abets the commission of any offence by the

Abetting commission of an offence by the public, or by more than ten persons.	public generally, or by any number or class of persons exceeding ten, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.
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Illustration.

A affixes in a public place a placard, instigating a sect, consisting of more than ten members, to meet at a certain time and place for the purpose of attacking the members of an adverse sect while engaged in a procession: *A* has committed the offence defined in this section.

Concealing design to commit offence punishable with death or transportation for life.	118. Whoever, intending to facilitate, or knowing it to be likely that he will thereby facilitate, the commission of an offence punishable with death or transportation for life,
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voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design,

shall, if that offence be committed, be punished with imprisonment of either description for a term which may extend to seven years; or, if	if offence be committed;
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* As to the application of s. 117 to offences under special or local laws, see s. 40, *supra*.

the offence be not committed, with imprisonment of either description for a term which may extend to three years; and, in either case, shall also be liable to fine.

Illustration.

A, knowing that dacoity is about to be committed at *B*, falsely informs the Magistrate that a dacoity is about to be committed at *C*, a place in an opposite direction, and thereby misleads the Magistrate with intent to facilitate the commission of the offence. The dacoity is committed at *B* in pursuance of the design: *A* is punishable under this section.

119. Whoever, being a public servant, intending to facilitate, or knowing it to be likely that he will thereby facilitate, the commission of an offence, which it is his duty, as such public servant, to prevent,

Public servant concealing design to commit offence which it is his duty to prevent. voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design,

shall, if the offence be committed, be punished with imprisonment of any description provided for the offence for a term which may extend to one-half of the longest term of such imprisonment, or with such fine as is provided for that offence, or with both;

or, if the offence be punishable with death, &c., for life, with imprisonment of either description for a term which may extend to ten years;

or, if the offence be not committed, shall be punished with imprisonment of any description provided for the offence for a term which may extend to one-fourth part of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both.

Illustration.

A, an officer of police, being legally bound to give information of all designs to commit robbery which may come to his knowledge, and knowing that *B* designs to commit robbery, omits to give such information with intent to facilitate the commission of that offence: Here *A* has, by an illegal omission, concealed the existence of *B*'s design, and is liable to punishment according to the provision of this section.

120. Whoever, intending to facilitate, or knowing it to be
 Concealing design to com- likely that he will thereby facilitate, the
 mit offence punishable with commission of an offence punishable
 imprisonment— with imprisonment,

voluntarily conceals, by any act or illegal omission, the exis-
 tence of a design to commit such offence, or makes any repre-
 sentation which he knows to be false respecting such design,

shall, if the offence be committed, be punished with imprison-
 if offence be committed; ment of the description provided for the
 one-fourth, and, if the offence be not committed, to one-eighth, of
 if offence be not committed. the longest term of such imprisonment,
 or with such fine as is provided for the
 offence, or with both.

CHAPTER VI.*

OF OFFENCES AGAINST THE STATE.

121. Whoever wages war against the Queen, or attempts to
 Waging or attempting to wage such war, or abets the waging of
 wage war, or abetting waging such war, shall be punished with death
 of war, against the Queen. or transportation for life. and shall for-
 feit all his property.

Illustrations.

(a) *A* joins an insurrection against the Queen : *A* has committed the
 offence defined in this section.

(b.) *A*, in India abets an insurrection against the Queen's Government
 of Ceylon by sending arms to the insurgents : *A* is guilty of abetting the
 waging of war against the Queen.

121A.† Whoever, within or without British India, conspires
 Conspiracy to commit of- to commit any of the offences punish-
 fences punishable by section 121, or to deprive the
 121. Queen of the sovereignty of British

* All persons are bound to give information of offences punishable
 under ss. 121 to 126 (inclusive) and s. 130 of this Chapter.—*See* the Code
 of Criminal Procedure (Act V. of 1898), s. 44.

As to authority for instituting prosecutions under Ch. VI. (except s.
 127), *see* the Code of Criminal Procedure (Act V. of 1898), s. 196.

† S. 121A has been inserted by the Indian Penal Code Amendment
 Act (XXVII. of 1870), s. 4. Chs. IV., V., and XXIII. of this Code apply
 to offences punishable under s. 121A.—*See* Act XXVII. of 1870, s. 13.

India, or of any part thereof, or conspires to overawe, by means of criminal force or the show of criminal force, the Government of India or any Local Government, shall be punished with transportation for life or any shorter term, or with imprisonment of either description, which may extend to ten years.

Explanation.—To constitute a conspiracy under this section, it is not necessary that any act or illegal omission shall take place in pursuance thereof.

122. Whoever collects men, arms, or ammunition, or otherwise prepares to wage war, with the intention of waging war against the Queen, shall be punished with transportation for life or imprisonment of either description for a term not exceeding ten years, and shall forfeit all his property.

123. Whoever, by any act or by any illegal omission, conceals the existence of a design to wage war against the Queen, intending, by such concealment, to facilitate, or knowing it to be likely that such concealment will facilitate, the waging of such war, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

124. Whoever, with the intention of inducing or compelling the Governor-General of India, or the Governor of any Presidency, or a Lieutenant-Governor, or a Member of the Council of the Governor-General of India, or of the Council of any Presidency, to exercise, or refrain from exercising, in any manner any of the lawful powers of such Governor-General, Governor, Lieutenant-Governor, or Member of Council,

assaults or wrongfully restrains, or attempts wrongfully to restrain, or overawes, by means of criminal force or the show of criminal force, or attempts so to overawe, such Governor-General, Governor, Lieutenant-Governor, or Member of Council,

shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

124A.* Whoever, by words, either spoken or written, or by signs, or by visible representation or otherwise, brings, or attempts to bring, into hatred or contempt, or excites, or attempts to excite, disaffection towards, Her Majesty or the Government established by law in British India, shall be punished with transportation for life or any shorter term, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

Explanation 1.—The expression “disaffection” includes disloyalty and all feelings of enmity.

Explanation 2.—Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting, or attempting to excite, hatred, contempt, or disaffection, do not constitute an offence under this section.

Explanation 3.—Comments expressing disapprobation of the administrative or other action of the Government, without exciting or attempting to excite hatred, contempt, or disaffection, do not constitute an offence under this section.

125. Whoever wages war against the Government of any Asiatic Power in alliance or at peace with the Queen, or attempts to wage such war, or abets the waging of such war, shall be punished with transportation for life, to which fine may be added, or with imprisonment of either description for a term which may extend to seven years, to which fine may be added, or with fine.†

126. Whoever commits depredation, or makes preparations to commit depredation, on the territories of any Power in alliance or at peace with the Queen, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine, and to forfeiture of any property used, or intended to be used, in committing such depredation, or acquired by such depredation.†

* S. 124A has been substituted by the Indian Penal Code Amendment Act (IV. of 1898), s. 4, for the original s. 124A as inserted in the Code by the Indian Penal Code Amendment Act (XXVII. of 1870), s. 5. Chs. IV. and V. of this Code apply to offences punishable under s. 124A.—See Act XXVII. of 1870, s. 13.

† See also the Foreign Enlistment Act, 1870 (Stat. 33 & 34 Vict., c. 90), which applies to the whole of Her Majesty's dominions.

127. Whoever receives any property, knowing the same to have been taken in the commission of any of the offences mentioned in sections 125 and 126, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine, and to forfeiture of the property so received.

128. Whoever, being a public servant, and having the custody of any State prisoner or prisoner of war, voluntarily allows such prisoner to escape from any place in which such prisoner is confined, shall be punished with transportation for life or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

129. Whoever, being a public servant, and having the custody of any State prisoner or prisoner of war, negligently suffers such prisoner to escape from any place of confinement in which such prisoner is confined, shall be punished with simple imprisonment for a term which may extend to three years, and shall also be liable to fine.

130. Whoever knowingly aids or assists any State prisoner or prisoner of war in escaping from lawful custody, or rescues, or attempts to rescue, any such prisoner, or harbours or conceals any such prisoner who has escaped from lawful custody, or offers, or attempts to offer, any resistance to the recapture of such prisoner, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—A State prisoner or prisoner of war, who is permitted to be at large on his parole within certain limits in British India, is said to escape from lawful custody if he goes beyond the limits within which he is allowed to be at large.

CHAPTER VII.

OF OFFENCES RELATING TO THE ARMY AND NAVY.*

131. Whoever abets the committing of mutiny by an officer, soldier, or sailor in the army or navy of the Queen, or attempts to seduce any such officer, soldier, or sailor from his allegiance or his duty, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.†—In this section, the words “officer” and “soldier” include any person subject to the Articles of War‡ for the better government of Her Majesty’s army, or to the Articles of War contained in Act No. V. of 1869.

132. Whoever abets the committing of mutiny by an officer, soldier, or sailor in the army or navy of the Queen shall, if mutiny be committed in consequence of that abetment, be punished with death, or with transportation for life or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

133. Whoever abets an assault by an officer, soldier, or sailor in the army or navy of the Queen on any superior officer being in the execution of his office shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

134. Whoever abets an assault by an officer, soldier, or sailor in the army or navy of the Queen on any superior officer being in the execution of his office shall, if such assault be committed in consequence of that abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

* Also the Indian Marine Service—See s. 138A, *infra*.

† In s. 131, the *Explanation* has been added by the Indian Penal Code Amendment Act (XXVII. of 1870), s. 6.

‡ See now the Army Act, 1881 (Stat. 44 & 45 Vict., c. 58), as continued and amended by subsequent annual Army Acts.

135. Whoever abets the desertion of any officer, soldier, or sailor in the army or navy of the Queen shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

136. Whoever, except as hereinafter excepted, knowing, or having reason to believe, that an officer, soldier, or sailor in the army or navy of the Queen has deserted, harbours such officer, soldier, or sailor, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Exception.—This provision does not extend to the case in which the harbour is given by a wife to her husband.

137. The master or person in charge of a merchant vessel, on board of which any deserter from the army or navy of the Queen is concealed, shall, though ignorant of such concealment, be liable to a penalty not exceeding five hundred rupees if he might have known of such concealment but for some neglect of his duty as such master or person in charge, or for some want of discipline on board of the vessel.

138. Whoever abets what he knows to be an act of insubordination by an officer, soldier, or sailor in the army or navy of the Queen, shall, if such act of insubordination be committed in consequence of that abetment, be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

138A.* The foregoing sections of this chapter shall apply as if Her Majesty's Indian Marine Service were comprised in the navy of the Queen.

139. No person subject to any Articles of War for the army or navy of the Queen, or for any part of such army or navy, is subject to punishment under this Code for any of the offences defined in this chapter.

* S. 138A has been inserted by the Indian Marine Act (XIV. of 1887), s. 79.

140. Whoever, not being a soldier in the military or naval service of the Queen, wears any garb or token used by soldier, carries any token resembling any garb or token used by such a soldier, with the intention that it may be believed that he is such a soldier, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

CHAPTER VIII.*

OF OFFENCES AGAINST THE PUBLIC TRANQUILLITY.

141. An assembly of five or more persons is designated an "unlawful assembly" if the common object of the persons composing that assembly is—

first—to overawe, by criminal force or show of criminal force, the Legislative or Executive Government of India, or the Government of any Presidency, or any Lieutenant-Governor, or any public servant in the exercise of the lawful power of such public servant; or,

second—to resist the execution of any law or of any legal process; or,

third—to commit any mischief or criminal trespass or other offence; or,

fourth—by means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of

* As to duty to give information of offences punishable under s. 143, 144, 145, 147, or 148, see the Code of Criminal Procedure (Act V. of 1898), ss. 44 and 45.

In s. 141 the word offence has the same meaning when the thing punishable under the special or local law as defined in ss. 41 and 42 is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.—See s. 40, *supra*.

As to punishment for an offence under s. 148, enquired into by a Council of Elders in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), s. 14.

As to dispersion of unlawful assemblies, see the Code of Criminal Procedure (Act V. of 1898), Ch. IX.

the use of water, or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right ; or,

fifth—by means of criminal force or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation.—An assembly which was not unlawful when it assembled may subsequently become an unlawful assembly.

142. Whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly.

143.* Whoever is a member of an unlawful assembly shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

144.* Whoever, being armed with any deadly weapon, or with anything which, used as a weapon of offence, is likely to cause death, is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

145.* Whoever joins or continues in an unlawful assembly, knowing that such unlawful assembly has been commanded in the manner prescribed by law to disperse, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

146. Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.

* As to the duty to give information of offences punishable under ss. 143, 144, and 145, see the Code of Criminal Procedure (Act V. of 1898), ss. 44 and 45.

147.* Whoever is guilty of rioting shall be punished with imprisonment of either description for a term which may extend two years, or with fine, or with both.

Punishment for rioting.

148.*† Whoever is guilty of rioting being armed with a deadly weapon, or with anything which, used as a weapon of offence, is likely to cause death shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Rioting armed with deadly weapon.

149. If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person, who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

Every member of unlawful assembly guilty of offence committed in prosecution of common object.

150. Whoever hires, or engages or employs, or promotes, or hiring, or conniving at the hiring, engagement, or employment of, persons to join unlawful assembly, or any person to join or become a member of any unlawful assembly, shall be punishable, as a member of such unlawful assembly, and for any offence which may be committed by any such person as a member of such unlawful assembly in pursuance of such hiring, engagement, or employment, in the same manner as if he had been a member of such unlawful assembly, or himself had committed such offence.

151. Whoever knowingly joins or continues in any assembly of five or more persons likely to cause a disturbance of the public peace after such assembly has been lawfully commanded to disperse shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Knowingly joining or continuing in assembly of five or more persons after it has been commanded to disperse.

* As to the duty to give information of an offence punishable under s. 147 or 148, see the Code of Criminal Procedure (Act V. of 1898), ss. 44 and 45.

† As to punishment for an offence under s. 148, enquired into by a Council of Elders in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), s. 14.

Explanation.—If the assembly is an unlawful assembly within the meaning of section 141, the offender will be punishable under section 145.

152. Whoever assaults or threatens to assault, or obstructs or attempts to obstruct, any public servant in the discharge of his duty as such public servant in endeavouring to disperse an unlawful assembly, or to suppress a riot or affray, or uses, or threatens or attempts to use, criminal force to such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

153. Whoever maliciously or wantonly, by doing anything which is illegal, gives provocation to any person, intending or knowing it to be likely that such provocation will cause the offence of rioting to be committed, shall, if the offence of rioting be committed in consequence of such provocation, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both; and, if the offence of rioting be not committed, with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Wantonly giving provocation with intent to cause riot—

if rioting be committed ;

if not committed.

153A.* Whoever, by words, either spoken or written, or by signs, or by visible representations or otherwise, promotes, or attempts to promote, feelings of enmity or hatred between different classes of Her Majesty's subjects, shall be punished with imprisonment which may extend to two years, or with fine, or with both.

Promoting enmity between classes.

Explanation.—It does not amount to an offence within the meaning of this section to point out, without malicious intention, and with an honest view to their removal, matters which are producing, or have a tendency to produce, feelings of enmity or hatred between different classes of Her Majesty's subjects.

154. Whenever any unlawful assembly or riot takes place, the owner or occupier of the land upon which such unlawful assembly is held, or such riot is committed, and any per-

Owner or occupier of land on which an unlawful assembly is held.

* S. 153A has been inserted by the Indian Penal Code Amendment Act (IV. of 1898), s. 5. As to authority for instituting prosecutions under s. 153A, see the Code of Criminal Procedure (Act V. of 1898), s. 196.

son having or claiming an interest in such land, shall be punishable with fine not exceeding one thousand rupees,

if he or his agent or manager, knowing that such offence is being or has been committed, or having reason to believe it is likely to be committed, do not give the earliest notice thereof in his or their power to the principal officer at the nearest police-station,

and do not, in the case of his or their having reason to believe that it was about to be committed, use all lawful means in his or their power to prevent it, and, in the event of its taking place, do not use all lawful means in his or their power to disperse or suppress the riot or unlawful assembly.

155. Whenever a riot is committed for the benefit, or on behalf, of any person who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom,

such person shall be punishable with fine if he or his agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not respectively use all lawful means in his or their power to prevent such assembly or riot from taking place, and for suppressing and dispersing the same.

156. Whenever a riot is committed for the benefit, or on behalf, of any person who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom,

the agent or manager of such person shall be punishable with fine if such agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not use all lawful means in his power to prevent such riot or assembly from taking place, and for suppressing and dispersing the same.

157. Whoever harbours, receives, or assembles in any house or premises in his occupation or charge, or under his control, any persons, know-

ing that such persons have been hired, engaged, or employed, or are about to be hired, engaged, or employed, to join, or become members of, an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

158. Whoever is engaged or hired, or offers or attempts to be
 Being hired to take part in hired or engaged, to do, or assist in doing,
 an unlawful assembly or riot; any of the acts specified in section 141,
 shall be punished with imprisonment of either description for a term
 which may extend to six months, or with fine, or with both;

and whoever, being so engaged or hired as aforesaid, goes
 or to go armed. armed, or engages or offers to go armed,
 with any deadly weapon, or with anything
 which, used as a weapon of offence, is likely to cause death, shall
 be punished with imprisonment of either description for a term
 which may extend to two years, or with fine, or with both.

159. When two or more persons, by fighting in a public
 place, disturb the public peace, they are
 Affray. said to "commit an affray."

160. Whoever commits an affray shall be punished with im-
 Punishment for committing imprisonment of either description for a
 affray. term which may extend to one month, or
 with fine which may extend to one hundred rupees, or with both.

CHAPTER IX.*

OF OFFENCES BY OR RELATING TO PUBLIC SERVANTS.

161. Whoever, being or expecting to be a public servant, ac-
 Public servant taking gra- cepts or obtains, or agrees to accept or
 tification other than legal re- attempts to obtain, from any person, for
 muneration in respect of an himself, or for any other person, any gra-
 official act. tification whatever, other than legal re-
 munerat[i]on, as a motive or reward for doing, or forbearing to do,
 any official act, or for showing or forbearing to show, in the exer-
 cise of his official functions favour or disfavour to any person, or
 for rendering, or attempting to render, any service or disservice to
 any person, with the Legislative or Executive Government of India,

* As to authority for institution of prosecutions against certain public servants, see the Code of Criminal Procedure (Act V. of 1898), s. 197.

or with the Government of any Presidency, or with any Lieutenant-Governor, or with any public servant as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Explanations.—"Expecting to be a public servant."—If a person, not expecting to be in office, obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

"Gratification."—The word "gratification" is not restricted to pecuniary gratifications, or to gratifications estimable in money.

"Legal remuneration."—The words "legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government* which he serves to accept.

"A motive or reward for doing."—A person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, comes within these words.

Illustrations.

(a.) *A*, a Munsif, obtains from *Z*, a banker, a situation in *Z*'s bank for *A*'s brother, as a reward to *A* for deciding a cause in favour of *Z*: *A* has committed the offence defined in this section.

(b.) *A*, holding the office of Resident at the Court of a subsidiary Power, accepts a lakh of rupees from the minister of that Power. It does not appear that *A* accepted this sum as a motive or reward for doing or forbearing to do any particular official act, or for rendering or attempting to render any particular service to that Power with the British Government. But it does appear that *A* accepted the sum as a motive or reward for generally showing favour in the exercise of his official functions to that Power: *A* has committed the offence defined in this section.

(c.) *A*, a public servant, induces *Z* erroneously to believe that *A*'s influence with the Government has obtained a title for *Z*, and thus induces

* In the definition of "legal remuneration," the word "Government" includes—

- (1) a Court of Wards for the purposes of s. 12 (2) of the Central Provinces Government Wards Act (XVII. of 1885);
- (2) the Senate of the Allahabad University for the purposes of s. 18 (1) of the Allahabad University Act (XVIII. of 1887);
- (3) any employer of a railway-servant as such for the purposes of s. 137 (1) of the Indian Railways Act (IX. of 1890).

Z to give *A* money as a reward for this service : *A* has committed the offence defined in this section.

162. Whoever accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by corrupt or illegal means, any public servant to do or to forbear to do any official act, or, in the exercise of the official functions of such public servant, to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person, with the Legislative or Executive Government of India, or with the Government of any Presidency, or with any Lieutenant-Governor, "or with any member of the Senate of the Allahabad University,"* or with any public servant as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

163. Whoever accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by the exercise of personal influence, any public servant to do, or to forbear to do, any official act, or, in the exercise of the official functions of such public servant, to show favour or disfavour to any person, or to render, or attempt to render, any service or disservice to any person with the Legislative or Executive Government of India, or with the Government of any Presidency, or with any Lieutenant-Governor, "or with any member of the Senate of the Allahabad University,"* or with any public servant as such, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Illustration.

An advocate who receives a fee for arguing a case before a Judge ; a person who receives pay for arranging and correcting a memorial addressed to Government, setting forth the services and claims of the memorialist ; a paid agent for a condemned criminal, who lays before the Government statements tending to show that the condemnation was unjust, are not within this section, inasmuch as they do not exercise or profess to exercise personal influence.

* In ss. 162 and 163, the words quoted have been inserted by the Allahabad University Act (XVIII. of 1887), s. 18 (2).

164. Whoever, being a public servant, in respect of whom either of the offences defined in the last two preceding sections is committed, abets the offences, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for abetment by public servant of offences defined in section 162 or 163.

Illustration.

A is a public servant. *B*, *A*'s wife, receives a present as a motive for soliciting *A* to give an office to a particular person. *A* abets her doing so: *B* is punishable with imprisonment for a term not exceeding one year, or with fine, or with both. *A* is punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

165. Whoever, being a public servant, accepts or obtains, or agrees to accept or attempts to obtain, for himself or for any other person, any valuable thing without consideration, or for a consideration which he knows to be inadequate,

Public servant obtaining valuable thing, without consideration, from person concerned in proceeding or business transacted by such public servant.

from any person whom he knows to have been, or to be, or to be likely to be, concerned in any proceeding or business transacted, or about to be transacted, by such public servant, or having any connection with the official functions of himself, or of any public servant to whom he is subordinate,

or from any person whom he knows to be interested in, or related to, the person so concerned,

shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Illustrations.

(a) *A*, a Collector, hires a house of *Z*, who has a settlement-case pending before him. It is agreed that *A* shall pay fifty rupees a month, the house being such that, if the bargain were made in good faith, *A* would be required to pay two hundred rupees a month: *A* has obtained a valuable thing from *Z* without adequate consideration.

(b) *A*, a Judge, buys of *Z*, who has a cause pending in *A*'s Court, Government Promissory Notes at a discount when they are selling in the market at a premium: *A* has obtained a valuable thing from *Z* without adequate consideration.

(c) *A*'s brother is apprehended and taken before *A*, a Magistrate, on a charge of perjury. *A* sells to *Z* shares in a bank at a premium when they are selling in the market at a discount. *Z* pays *A* for the shares accord-

ingly : The money so obtained by A is a valuable thing obtained by him without adequate consideration.

166. Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as law with intent to cause injury to any person. such public servant, intending to cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Illustration.

A, being an officer directed by law to take property in execution in order to satisfy a decree pronounced in Z's favour by a Court of Justice, knowingly disobeys that direction of law with the knowledge that he is likely thereby to cause injury to Z : A has committed the offence defined in this section.

167. Whoever, being a public servant, and being, as such public servant, charged with the preparation or translation of any document, Public servant framing an incorrect document with intent to cause injury. frames or translates that document in a manner which he knows or believes to be incorrect, intending thereby to cause, or knowing it to be likely that he may thereby cause, injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

168. Whoever, being a public servant, and being legally bound, as such public servant, not to engage in trade, Public servant unlawfully engaging in trade. engages in trade, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

169. Whoever, being a public servant, and being legally bound, as such public servant, not to purchase or bid for certain property, Public servant unlawfully buying or bidding for property. purchases or bids for that property, either in his own name, or in the name of another, or jointly or in shares with others, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both : and the property, if purchased, shall be confiscated.

170. Whoever pretends to hold any particular office as a public servant, knowing that he does not hold such office, or falsely personates Personating a public servant.

any other person holding such office, and, in such assumed character, does, or attempts to do, any act under colour of such office, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

171. Whoever, not belonging to a certain class of public servants, wears any garb or carries any token resembling any garb or token used by that class of public servants, with the intention that it may be believed, or with the knowledge that it is likely to be believed, that he belongs to that class of public servants, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

CHAPTER X.*

OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.

172. Whoever absconds in order to avoid being served with a summons, notice, or order proceeding from any public servant legally competent, as such public servant, to issue such summons, notice, or order, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the summons, notice, or order is to attend in person or by agent, or to produce a document, in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

* As to the application of ss 176, 177, and 187 of this chapter to offences under special or local laws, *see* s. 40, *supra*.

As to authority for instituting prosecutions under ss. 172 to 188 (both inclusive), *see* the Code of Criminal Procedure (Act V. of 1898), s. 195 (1) (a).

As to procedure in case of offences described in ss. 175, 178, 179, and 180, *see* the Code of Criminal Procedure (Act V. of 1898), ss. 480, 481, 482, and the Presidency Small Cause Courts Act (XV. of 1882), Ch. XII.

173.* Whoever, in any manner, intentionally prevents the
 Preventing service of sum- serving on himself, or on any other per-
 mons or other proceeding, or son, of any summons, notice, or order
 preventing publication there- proceeding from any public servant
 of. legally competent, as such public ser-
 vant, to issue such summons, notice, or order,

or intentionally prevents the lawful affixing to any place of any
 such summons, notice, or order,

or intentionally removes any such summons, notice, or order
 from any place to which it is lawfully affixed,

or intentionally prevents the lawful making of any proclama-
 tion under the authority of any public servant legally com-
 petent, as such public servant, to direct such proclamation to be
 made,

shall be punished with simple imprisonment for a term which
 may extend to one month, or with fine which may extend to five
 hundred rupees, or with both ;

or, if the summons, notice, order, or proclamation is to attend
 in person or by agent, or to produce a document, in a Court of
 Justice, with simple imprisonment for a term which may extend
 to six months, or with fine which may extend to one thousand
 rupees, or with both.

174.* Whoever, being legally bound to attend in person or by
 Non-attendance in obedi- an agent at a certain place and time in
 ence to an order from public obedience to a summons, notice, order,
 servant. or proclamation proceeding from any
 public servant legally competent, as such public servant, to issue
 the same,

intentionally omits to attend at that place or time, or departs
 from the place where he is bound to attend before the time at
 which it is lawful for him to depart,

shall be punished with simple imprisonment for a term which
 may extend to one month, or with fine which may extend to five
 hundred rupees, or with both ;

or, if the summons, notice, order, or proclamation is to attend
 in person or by agent in a Court of Justice, with simple imprison-

* As to authority for instituting prosecutions under ss. 173 and 174,
 see the Code of Criminal Procedure (Act V. of 1898), s. 195 (1) (a).

ment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Illustrations.

(a.) *A*, being legally bound to appear before the Supreme Court at Calcutta in obedience to a subpœna issuing from that Court, intentionally omits to appear : *A* has committed the offence defined in this section.

(b.) *A*, being legally bound to appear before a Zillah Judge as a witness in obedience to a summons issued by that Zillah Judge, intentionally omits to appear : *A* has committed the offence defined in this section.

175.* Whoever, being legally bound to produce or deliver up any document to any public servant as such, intentionally omits so to produce or deliver up the same, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both ;

or, if the document is to be produced or delivered up to a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Illustration.

A, being legally bound to produce a document before a Zillah Court, intentionally omits to produce the same : *A* has committed the offence defined in this section.

176.* Whoever, being legally bound to give any notice, or to furnish information on any subject, to any public servant as such, intentionally omits to give such notice, or to furnish such information, in the manner and at

* As to procedure in case of an offence described in s. 175, see the Code of Criminal Procedure (Act V. of 1898), ss. 480, 481, 482, and the Presidency Small Cause Courts Act (XV. of 1882), Ch XII.

As to authority for instituting prosecutions under ss. 175 and 176, see the Code of Criminal Procedure (Act V. of 1898), s. 195 (1) (a).

In s. 176, the word "offence" has the same meaning when the thing punishable under the special or local law as defined in ss. 41 and 42 is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.—See s. 40, *supra*.

the time required by law, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both ;

or, if the notice or information required to be given respects the commission of an offence,* or is required for the purpose of preventing the commission of an offence,* or in order to the apprehension of an offender,* with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

177.* Whoever, being legally bound to furnish information on any subject to any public servant as such, furnishes, as true, information on the subject which he knows or has reason to believe to be false, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both ;

or, if the information which he is legally bound to give respects the commission of an offence,* or is required for the purpose of preventing the commission of an offence,* or in order to the apprehension of an offender,* with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustrations.

(a.) A, a landholder, knowing of the commission of a murder within the limits of his estate, wilfully misinforms the Magistrate of the district that the death has occurred by accident in consequence of the bite of a snake : A is guilty of the offence defined in this section.

(b.) A, a village-watchman, knowing that a considerable body of strangers has passed through his village in order to commit a dacoity in the house of Z, a wealthy merchant residing in a neighbouring place, and

* As to meaning of " offence " and " offender," see s. 177, *Explanation, infra*.

In s. 177. the word offence has the same meaning when the thing punishable under the special or local law as defined in ss. 41 and 42 is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.—See 40, *supra*.

As to authority for instituting a prosecution under s. 177, see the Code of Criminal Procedure (Act V. of 1898), s. 195 (1) (a).

being bound, under cl. 5, s. 7, Reg. III., 1821,* of the Bengal Code, to give early and punctual information of the above fact to the officer of the nearest police-station, wilfully misinforms the police-officer that a body of suspicious characters passed through the village with a view to commit dacoity in a certain distant place in a different direction : Here A is guilty of the offence defined in the latter part of this section.

Explanation.†—In section 176 and in this section, the word “offence” includes any act committed at any place out of British India, which, if committed in British India, would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459, and 460; and the word “offender” includes any person who is alleged to have been guilty of any such act.

178.‡ Whoever refuses to bind himself, by an oath “or affirmation.”§ to state the truth, when required so to bind himself by a public servant legally competent to require that he shall so bind himself, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

179.‡ Whoever, being legally bound to state the truth on any subject to any public servant, refuses to answer any question demanded of him touching that subject by such public servant, in the exercise of the legal powers of such public servant, shall be punished with simple imprisonment

* Ben. Reg. III. of 1821 has been repealed by Act XVII. of 1862.—See s. 45 of the Code of Criminal Procedure (Act V. of 1898).

† This Explanation has been added by the Indian Criminal Laws Amendment Act (III. of 1894), s. 5.

‡ As to authority for instituting prosecutions under ss. 178 and 179, see the Code of Criminal Procedure (Act V. of 1898), s. 195 (1) (a).

As to procedure in case of offences described in ss. 178 and 179, see the Code of Criminal Procedure (Act V. of 1898) ss 480, 481, 482, and the Presidency Small Cause Courts Act (XV. of 1882), Ch. XII.

§ In s. 178, the words quoted have been inserted by the Indian Oaths Act (X. of 1873), s. 15.

for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

180.*† Whoever refuses to sign any statement made by him when required to sign that statement by a public servant legally competent to require that he shall sign that statement, shall be punished with simple imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

181.† Whoever, being legally bound, by an oath "or affirmation,"‡ to state the truth on any subject to any public servant or other person authorized by law to administer such oath "or affirmation,"‡ makes to such public servant or other person as aforesaid, touching that subject, any statement which is false, and which he either knows or believes to be false, or does not believe to be true, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

182.†§ Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant—

(a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or

(b) to use the lawful power of such public servant to the injury or annoyance of any person,

* As to procedure in case of an offence described in s. 180, *see* the Code of Criminal Procedure (Act V. of 1898), ss. 480, 481, 482, and the Presidency Small Cause Courts Act (XV. of 1882), Ch. XII.

† As to authority for instituting prosecutions under ss. 180-182, *see* the Code of Criminal Procedure (Act V. of 1898), s. 195 (1) (a).

‡ In s. 181, the words quoted have been inserted by the Indian Oaths Act (X. of 1873), s. 15.

§ S. 182 has been substituted for the original by the Indian Criminal Laws Amendment Act (III. of 1895), s. 1.

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Illustrations.

(a.) *A* informs a Magistrate that *Z*, a police-officer subordinate to such Magistrate, has been guilty of neglect of duty or misconduct, knowing such information to be false, and knowing it to be likely that the information will cause the Magistrate to dismiss *Z*: *A* has committed the offence defined in this section.

(b.) *A* falsely informs a public servant that *Z* has contraband salt in a secret place, knowing such information to be false, and knowing that it is likely that the consequence of the information will be a search of *Z*'s premises attended with annoyance to *Z*: *A* has committed the offence defined in this section.

(c.) *A* falsely informs a police-man that he has been assaulted and robbed in the neighbourhood of a particular village. He does not mention the name of any person as one of his assailants, but knows it to be likely that, in consequence of this information, the police will make enquiries, and institute searches, in the village to the annoyance of the villagers or some of them: *A* has committed an offence under this section.

183.* Whoever offers any resistance to the taking of any property by the lawful authority of any public servant, knowing or having reason to believe that he is such public servant, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

184.* Whoever intentionally obstructs any sale of property offered for sale by the lawful authority of any public servant as such shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

185* Whoever, at any sale of property held by the lawful authority of a public servant as such, purchases or bids for any property on account of any person, whether himself or any other, whom he knows to be under a legal incapacity to purchase that property at that sale, or bids for such property not intending to perform the obligations under which he lays himself by such bid-

* As to authority for instituting prosecutions under ss. 183 to 185 (both inclusive), see the Code of Criminal Procedure (Act V. of 1898), s. 195 (1) (a).

ding, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

186.* Whoever voluntarily obstructs any public servant in the discharge of his public functions shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

187.* Whoever, being bound by law to render or furnish assistance to any public servant in the execution of his public duty, intentionally omits to give such assistance, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both ;

and, if such assistance be demanded of him by a public servant legally competent to make such demand for the purposes of executing any process lawfully issued by a Court of Justice, or of preventing the commission of an offence,† or of suppressing a riot or affray, or of apprehending a person charged with or guilty of an offence,† or of having escaped from lawful custody, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

188.* Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction,

shall, if such disobedience causes or tends to cause obstruction, annoyance, or injury, or risk of obstruction, annoyance, or injury, to any persons lawfully employed, be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both ;

* As to authority for instituting prosecutions under ss. 186 to 188, see the Code of Criminal Procedure (Act V. of 1898), s. 195 (1) (a).

† In s. 187, the word " offence " denotes a thing punishable under this Code, or under any special or local law as defined in ss. 41 and 42 of this Code.—See s. 400f this Code, *supra*.

and, if such disobedience causes or tends to cause danger to human life, health, or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Explanation.—It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.

Illustration.

An order is promulgated by a public servant lawfully empowered to promulgate such order directing that a religious procession shall not pass down a certain street. A knowingly disobeys the order, and thereby causes danger or riot : A has committed the offence defined in this section .

189. Whoever holds out any threat of injury to any public

Threat of injury to public servant, or to any person in whom he believes that public servant to be interested, for the purpose of inducing that public servant to do any act, or to forbear or delay to do any act, connected with the exercise of the public functions of such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

190. Whoever holds out any threat of injury to any person

Threat of injury to induce person to refrain from applying for protection to public servant. for the purpose of inducing that person to refrain or desist from making a legal application, for protection against any injury, to any public servant legally empowered as such to give such protection, or to cause such protection to be given, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

CHAPTER XI.*

OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.

191. Whoever, being legally bound by an oath, or by any express provision of law, to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false, or does not believe to be true, is said to give false evidence.

Explanation 1.—A statement is within the meaning of this section, whether it is made verbally or otherwise.

Explanation 2.—A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.

Illustrations.

(a) *A*, in support of a just claim which *B* has against *Z* for one thousand rupees, falsely swears on a trial that he heard *Z* admit the justice of *B*'s claim : *A* has given false evidence.

(b) *A*, being bound by an oath to state the truth, states that he believes a certain signature to be the handwriting of *Z* when he does not believe it to be the handwriting of *Z* : Here *A* states that which he knows to be false, and, therefore, gives false evidence.

(c) *A*, knowing the general character of *Z*'s handwriting, states that he believes a certain signature to be the handwriting of *Z*, *A*, in good faith, believing it to be so : Here *A*'s statement is merely as to his belief, and

* As to the application of ss. 194, 195, 201 to 203, 211 to 214, 216, and 221 to 225 to offences under special or local laws, see s. 40, *supra*.

As to authority for instituting prosecutions under ss. 193 to 196, 199, 200, 205 to 211, and 228, see the Code of Criminal Procedure (Act V. of 1898), s. 195 (b).

As to procedure in case of the offences described in ss. 193, 196, 199, 200 and 205 to 210, see the Code of Civil Procedure (Act XIV. of 1882), s. 643; and in case of the offence described in s. 228, see the Code of Criminal Procedure (Act V. of 1898), ss. 480, 481, 432, and the Presidency Small Cause Courts Act (XV. of 1882), Ch. XII.

As to whipping for offences punishable under s. 193, or defined in ss. 194, 195, and 211, see now the Whipping Act (IV. of 1909).

As to punishment for offences under ss. 193 to 196, 201, 211, and 212 enquired into by a Council of Elders in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), s. 14.

is true as to his belief, and therefore, although the signature may not be the handwriting of Z, A has not given false evidence.

(d.) A, being bound by an oath to state the truth, states that he knows that Z was at a particular place on a particular day, not knowing anything upon the subject : A gives false evidence, whether Z was at that place on the day named or not.

(e.) A, an interpreter or translator, gives or certifies, as a true interpretation or translation of a statement or document which he is bound by oath to interpret or translate truly, that which is not, and which he does not believe to be, a true interpretation or translation : A has given false evidence.

192. Whoever causes any circumstance to exist, or makes any false entry in any book or record, or makes any document containing a false statement, intending that such circumstance, false entry, or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry, or false statement, so appearing in evidence, may cause any person, who, in such proceeding, is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said "to fabricate false evidence."

Illustrations.

(a.) A puts jewels into a box belonging to Z, with the intention that they may be found in that box, and that this circumstance may cause Z to be convicted of theft : A has fabricated false evidence.

(b.) A makes a false entry in his shop-book for the purpose of using it as corroborative evidence in a Court of Justice : A has fabricated false evidence.

(c.) A, with the intention of causing Z to be convicted of a criminal conspiracy, writes a letter in imitation of Z's handwriting, purporting to be addressed to an accomplice in such criminal conspiracy, and puts the letter in a place which he knows that the officers of the police are likely to search : A has fabricated false evidence.

193. Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ;

and whoever intentionally gives or fabricates false evidence in any other case shall be punished with imprisonment of either des-

cription for a term which may extend to three years, and shall also be liable to fine.

Explanation 1.—A trial before a Court-martial* is a judicial proceeding †

Explanation 2.—An investigation directed by law preliminary to a proceeding before a Court of Justice is a stage of a judicial proceeding, ‡ though that investigation may not take place before a Court of Justice.

Illustration.

A, in an inquiry before a Magistrate for the purpose of ascertaining whether Z ought to be committed for trial, makes on oath a statement which he knows to be false : As this inquiry is a stage of a judicial proceeding, A has given false evidence.

Explanation 3.—An investigation directed by a Court of Justice according to law, and conducted under the authority of a Court of Justice, is a stage of a judicial proceeding, ‡ though that investigation may not take place before a Court of Justice.

Illustration.

A, in an inquiry before an officer deputed by a Court of Justice to ascertain on the spot the boundaries of land, makes on oath a statement which he knows to be false : As this inquiry is a stage of a judicial proceeding, A has given false evidence.

194. Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence ‡ which is capital “ by the law of British India or England,” § shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine ;

* In *Explanation 1* to s. 193, the words, “ or before a Military Court of Request,” have here been omitted, having been repealed by the Cantonments Act (XIII. of 1889).

† For definition of “ judicial proceeding ” in the *Explanations* to s. 193, see the Code of Criminal Procedure (Act V. of 1898), s. 4 (m).

‡ In s. 194, the word “ offence ” denotes a thing punishable under this Code, or under any special or local law as defined in ss. 41 and 42 of this Code.—See s. 40 of this Code, *supra*.

§ In s. 194, as amended by s. 7 of the Indian Penal Code Amendment Act (XXVII. of 1870), the words quoted have been substituted for the words “ by this Code or the law of England ” by s. 149 of the Indian Railways Act (IX. of 1890).

and, if an innocent person be convicted and executed in consequence of such false evidence, the person who gives such false evidence shall be punished, either with death or the punishment hereinbefore described.

195. Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence* punishable with transportation or imprisonment, which, "by the law of British India or England,"† is not capital, but punishable with transportation for life, or imprisonment for a term of seven years or upwards, shall be punished as a person convicted of that offence* would be liable to be punished.

Illustration.

A gives false evidence before a Court of Justice, intending thereby to cause Z to be convicted of a dacoity. The punishment of dacoity is transportation for life or rigorous imprisonment for a term which may extend to ten years, with or without fine: A, therefore, is liable to such transportation or imprisonment, with or without fine.

196. Whoever corruptly uses, or attempts to use, as true or genuine evidence, any evidence which he knows to be false or fabricated, shall be punished in the same manner as if he gave or fabricated false evidence.

197. Whoever issues or signs any certificate required by law to be given or signed, or relating to any fact of which such certificate is by law admissible in evidence, knowing or believing that such certificate is false in any material point, shall be punished in the same manner as if he gave false evidence.

198. Whoever corruptly uses, or attempts to use, any such certificate as a true certificate knowing the same to be false in any material point shall be punished in the same manner as if he gave false evidence.

* In s. 195, the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in ss. 41 and 42 of this Code.—See s. 40 of this Code, *supra*.

† In s. 195, as amended by s. 7 of the Indian Penal Code Amendment Act (XXVII. of 1870), for the words "by this Code or the law of England" the words quoted have been substituted.—See the Indian Railways Act (IX. of 1890), s. 149.

199. Whoever, in any declaration* made or subscribed by him, which declaration* any Court of Justice, or any public servant or other person, is bound or authorized by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false, or does not believe to be true, touching any point material to the object for which the declaration* is made or used, shall be punished in the same manner as if he gave false evidence.

200. Whoever corruptly uses, or attempts to use, as true, any such declaration, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

Explanation.—A declaration which is inadmissible merely upon the ground of some informality is a declaration within the meaning of sections 199 and 200.

201.† Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false,

shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ;

and, if the offence is punishable with transportation for life, or if punishable with transportation ; with imprisonment which may extend to ten years, shall be punished with im-

* In s. 199, for meaning of "declaration," see s. 200, *Explanation* *infra*.

† In s. 201, the word "offence" has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.—See s. 40, *supra*.

The word "offence" in s. 201 includes any act committed in any place out of British India, which, if committed in British India, would be punishable under any of the following sections, namely, 302, 304, 382, 392 to 399, 402, 435, 436, 449, 450, and 457 to 460.—See *Explanation* to s. 203, *infra*.

prisonment of either description for a term which may extend to three years, and shall also be liable to fine;

and, if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.

Illustration.

A, knowing that *B* has murdered *Z*, assists *B* to hide the body with the intention of screening *B* from punishment: *A* is liable to imprisonment of either description for seven years, and also to fine.

202.* Whoever, knowing or having reason to believe that an offence has been committed, intentionally omits to give any information respecting that offence which he is legally bound to give, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

203.† Whoever, knowing or having reason to believe that an offence has been committed, gives any information respecting that offence which he knows or believes to be false, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Explanation.‡—In sections 201 and 202, and in this section, the word ‘offence’ includes any act committed in any place out of British India, which, if committed in British India, would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459, and 460.

* In s. 202, the word “offence” has the same meaning when the thing punishable under the special or local law with imprisonment for a term of six months or upwards, whether with or without fine.—See s. 40, *supra*. Also see the *Explanation* to s. 203 (next following).

† In s. 203, the word “offence” denotes a thing punishable under this Code, or under any special or local law as defined in ss. 41 and 42 of this Code.—See s. 40, *supra*. See also the *Explanation* to the section.

‡ This *Explanation* has been added by the Indian Criminal Law Amendment Act (III. of 1894), s. 6.

204. Whoever secretes or destroys any document which he may be lawfully compelled to produce as evidence in a Court of Justice, or in any proceeding lawfully held before a public servant as such, or obliterates or renders illegible the whole or any part of such document with the intention of preventing the same from being produced or used as evidence before such Court or public servant as aforesaid, or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

205. Whoever falsely personates another, and, in such assumed character, makes any admission or statement, or confesses judgment, or causes any process to be issued, or becomes bail or security, or does any other act in any suit or criminal prosecution, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

206. Whoever fraudulently removes, conceals, transfers, or delivers to any person any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture, or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced, by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made, by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

207. Whoever fraudulently accepts, receives, or claims any property or any interest therein, knowing that he has no right or rightful claim to such property or interest, or practises any deception touching any right to any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture, or in satisfaction of a fine under a sentence which has been pronounced, or which he knows to be likely to be pronounced, by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made,

by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

208. Whoever fraudulently causes or suffers a decree or order to be passed against him at the suit of any person for a sum not due, or for a larger sum than is due to such person, or for any property or interest in property to which such person is not entitled, and fraudulently causes or suffers a decree or order to be executed against him after it has been satisfied, or for anything in respect of which it has been satisfied, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustration.

A institutes a suit against *Z*. *Z*, knowing that *A* is likely to obtain a decree against him, fraudulently suffers a judgment to pass against him for a larger amount at the suit of *B*, who has no just claim against him, in order that *B*, either on his own account, or for the benefit of *Z*, may share in the proceeds of any sale of *Z*'s property which may be made under *A*'s decree : *Z* has committed an offence under this section.

209. Whoever fraudulently or dishonestly, or with intent to injure or annoy any person, makes in a claim in Court any claim which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

210. Whoever fraudulently obtains a decree or order against any person for a sum not due, or for a larger sum than is due, or for any property or interest in property to which he is not entitled, or fraudulently causes a decree or order to be executed against any person after it has been satisfied, or for anything in respect of which it has been satisfied, or fraudulently suffers or permits any such act to be done in his name, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

211.* Whoever, with intent to cause injury to any person, institutes, or causes to be instituted, any criminal proceeding against that person, on a false charge of offence made with intent to injure.

* In s. 211, the word " offence " denotes a thing punishable under this Code, or under any special or local law as defined in ss. 41 and 42 of this Code.—See s. 40 of this Code, *supra*.

or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both,

and, if such criminal proceeding be instituted on a false charge of an offence punishable with death, transportation for life, or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

212.* Whenever an offence has been committed, whoever Harbours† or conceals a person whom he knows or has reason to believe to be the offender with the intention of screening him from legal punishment,

shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine ;

and if the offence is punishable with transportation for life, or if punishable with transportation for life, or with imprisonment, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine ;

and, if the offence is punishable with imprisonment which may extend to one year, and not to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

‘ Offence ’ in this section includes any act committed at any place out of British India, which, if committed in British India, would be punishable under any of the following sections, namely, 302, 304, 332, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459, and 460; and every such act shall,

* In s. 212, the word “ offence ” has the same meaning when the thing punishable under the special or local law as defined in ss. 41 and 42 is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.—See s. 40, *supra*.

† As to meaning of “ harbour,” see s. 216B, *infra*.

for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in British India.*

Exception.—This provision shall not extend to any case in which the harbour or concealment is by the husband or wife of the offender.

Illustration

A, knowing that *B* has committed dacoity, knowingly 'conceals *B* in order to screen him from legal punishment: Here, as *B* is liable to transportation for life, *A* is liable to imprisonment of either description for a term not exceeding three years, and is also liable to fine.

213.† Whoever accepts or attempts to obtain, or agrees to
 Taking gift, &c., to screen an offender from punishment—
 accept, any gratification for himself or any other person, or any restitution of property to himself or any other person, in consideration of his concealing an offence, or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment,

shall, if the offence is punishable with death, be punished with
 if a capital offence ; imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ;

and, if the offence is punishable with transportation for life, or
 if punishable with transportation for life, or with imprisonment. with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine ;

and, if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

* This paragraph has been inserted by the Indian Criminal Law Amendment Act (III. of 1894), s. 7.

† In s. 213, the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in ss. 41 and 42 of this Code.—See s. 40 of this Code, *supra*.

For Exception to s. 213, see s. 214, *Excep., infra*.

214.* Whoever gives or causes, or offers or agrees to give or cause, any gratification to any person, or to restore, or cause the restoration of, any property to any person, in consideration of that person's concealing an offence, or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment,

shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

and, if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

and, if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence or with fine, or with both.

Exception—The provisions of sections 213 and 214 do not extend to any case in which the offence may lawfully be compounded.†

Illustrations.—[*Repealed by the old Criminal Procedure Code (Act X. of 1882).*]

215. Whoever takes, or agrees or consents to take, any gratification under pretence or on account of helping any person to recover any moveable property, of which he shall have been deprived by any offence punishable under this Code, shall, unless he uses all means in his power to cause the offender to be apprehended and convicted of the offence, be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

* In s. 214, the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in ss. 41 and 42 of this Code.—See s. 40 of this Code, *supra*.

† This Exception to s. 214 has been substituted by the Indian Penal Code Amendment Act (VIII. of 1882), s. 6, for the one originally enacted.

216.* Whenever any person convicted of, or charged with, an offence, being in lawful custody for that offence, escapes from such custody, or whenever a public servant, in the exercise of the lawful powers of such public servant, orders a certain person to be apprehended for an offence, whoever, knowing of such escape or order for apprehension, harbours† or conceals that person with the intention of preventing him from being apprehended, shall be punished in the manner following, that is to say—

if the offence for which the person was in custody or is ordered to be apprehended is punishable if a capital offence ; with death, he shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ;

if the offence is punishable with transportation for life or imprisonment for ten years, he shall be punished with imprisonment of either description for a term which may extend to three years, with or without fine ;

and, if the offence is punishable with imprisonment which may extend to one year, and not to ten years, he shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of the imprisonment provided for such offence, or with fine, or with both.

“ Offence ” in this section includes also any act or omission of which a person is alleged to have been guilty out of British India, which, if he had been guilty of it in British India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or under the Fugitive Offenders Act, 1881, or otherwise, liable to be apprehended or detained in custody in British India ; and every such act or omission shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in British India.‡

* In s. 216, the word “ offence ” has the same meaning when the thing punishable under the special or local law as defined in ss. 41 and 42 is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.—See s. 40, *supra*.

† As to meaning of “ harbour ”, see s. 216B, *infra*.

‡ This paragraph in s. 216 has been inserted by the Indian Criminal Law Amendment Act (X. of 1886), s. 23.

Exception.—This provision does not extend to the case in which the harbour or concealment is by the husband or wife of the person to be apprehended.

216A.* Whoever, knowing or having reason to believe that Penalty for harbouring any persons are about to commit, or robbers or dacoits. have recently committed, robbery or dacoity, harbours† them or any of them with the intention of facilitating the commission of such robbery or dacoity, or of screening them or any of them from punishment, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine

Explanation.—For the purposes of this section, it is immaterial whether the robbery or dacoity is intended to be committed, or has been committed, within or without British India.

Exception.—This provision does not extend to the case in which the harbour is by the husband or wife of the offender.

216B.* In sections 212, 216, and 216A, the word ‘harbour’ Definition of ‘harbour’ includes the supplying a person with in sections 212, 216, and snelter, food, drink, money, clothes, 216A. arms, ammunition, or means of conveyance, or the assisting a person in any way to evade apprehension.

217. Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or subject him to a less punishment than that to which he is liable, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or any charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

218. Whoever, being a public servant, and being, as such public servant, charged with the preparation of any record or other writing, frames that record or writing in a manner which he knows to be incorrect, with intent to cause, or knowing it to be likely that he will thereby

* Ss. 216A and 216B have been inserted by the Indian Criminal Law Amendment Act (III. of 1894), s. 8.

† For the definition of ‘harbour,’ see s. 216B (next following).

cause, loss or injury to the public, or to any person, or with intent thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or other charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

219. Whoever, being a public servant, corruptly or maliciously makes or pronounces, in any proceeding corruptly making stage of a judicial proceeding, any report, &c., contrary to law. report, order, verdict, or decision, which he knows to be contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

220. Whoever, being in any office which gives him legal authority to commit persons for trial or confinement, or to keep persons in confinement, corruptly or maliciously commits any person for trial or to confinement, or keeps any person in confinement, in the exercise of that authority, knowing that, in so doing, he is acting contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

221.* Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person charged with, or liable to be apprehended for, an offence, intentionally omits to apprehend such person, or intentionally suffers such person to escape, or intentionally aids such person in escaping, or attempting to escape, from such confinement, shall be punished as follows, that is to say—

with imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with death; or

* In s. 221, the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in ss. 41 and 42 of this Code.—See s. 40 of this Code, *supra*.

with imprisonment of either description for a term which may extend to three years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with transportation for life or imprisonment for a term which may extend to ten years ; or

with imprisonment of either description for a term which may extend to two years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with imprisonment for a term less than ten years.

222.* Whoever, being a public servant, legally bound, as Intentional omission to such public servant, to apprehend, or to apprehend on the part of keep in confinement, any person under public servant bound to ap- sentence of a Court of Justice for any prehend person under sen- offence. "or lawfully committed to cus- tence or lawfully committed. tody,"† intentionally omits to apprehend such person, or intention- ally suffers such person to escape, or intentionally aids such person in escaping, or attempting to escape, from such confinement, shall be punished as follows, that is to say---

with transportation for life or with imprisonment of either description for a term which may extend to fourteen years with or without fine, if the person in confinement, or who ought to have been apprehended, is under sentence of death ; or

with imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement, or who ought to have been apprehended, is subject, by a sentence of a Court of Justice, or by virtue of a commutation of such sentence, to transportation for life or penal servitude for life, or to transportation or penal servitude or imprisonment for a term of ten years or upwards ; or

with imprisonment of either description for a term which may extend to three years, or with fine, or with both, if the person in confinement, or who ought to have been apprehended, is subject, by a sentence of a Court of Justice, to imprisonment for a term

* In s. 222, the word " offence " denotes a thing punishable under this Code, or under any special or local law as defined in ss. 41 and 42 of this Code.—*See* s. 40 of this Code, *supra*.

† In s. 222, the words quoted have been inserted by the Indian Penal Code Amendment Act (XXVII. of 1870), s. 8.

not extending to ten years, "or if the person was lawfully committed to custody."*

223.† Whoever, being a public servant, legally bound, as such public servant, to keep in confinement any person charged with, or convicted of, any offence, "or lawfully committed to custody,"* negligently suffers such person to escape from confinement, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

224.† Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself for any offence with which he is charged, or of which he has been convicted, or escapes, or attempts to escape, from any custody in which he is lawfully detained for any such offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Explanation.—The punishment in this section is in addition to the punishment for which the person to be apprehended or detained in custody was liable for the offence with which he was charged, or of which he was convicted.

225.† Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of any other person for an offence, or rescues, or attempts to rescue, any other person from any custody in which that person is lawfully detained for an offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

or, if the person to be apprehended, or the person rescued or attempted to be rescued, is charged with, or liable to be apprehended for, an offence punishable with transportation for life or imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

* In ss. 222 and 223, the words quoted have been inserted by the Indian Penal Code Amendment Act (XXVII. of 1870), s. 8.

† In ss. 223 to 225, the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in ss. 41 and 42 of this Code.—See s. 40 of this Code, *supra*.

or, if the person to be apprehended or rescued, or attempted to be rescued, is charged with, or liable to be apprehended for, an offence punishable with death, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

or, if the person to be apprehended or rescued, or attempted to be rescued, is liable, under the sentence of a Court of Justice, or by virtue of a commutation of such a sentence, to transportation for life, or to transportation, penal servitude, or imprisonment for a term of ten years or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

or, if the person to be apprehended or rescued, or attempted to be rescued, is under sentence of death, shall be punished with transportation for life or imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

225A.* Whoever, being a public servant, legally bound, as such public servant, to apprehend or to keep in confinement any person in any case not provided for in section 221, section 222, or section 223, or in any other law for the time being in force, omits to apprehend that person, or suffers him to escape from confinement, shall be punished—

Omission to apprehend, or sufferance of escape, on part of public servant in cases not otherwise provided for.

(a) if he does so intentionally—with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and,

(b) if he does so negligently—with simple imprisonment for a term which may extend to two years, or with fine, or with both.

225B.* Whoever, in any case not provided for in section 224 or section 225, or in any other law for the time being in force, intentionally offers any resistance or illegal obstruction to the lawful apprehension of him—

Resistance or obstruction to lawful apprehension, or escape, or rescue, in cases not otherwise provided for.

* Ss. 225A and 225B have been substituted by the Indian Criminal Law Amendment Act (X. of 1886), s. 24 (i), for s. 225A as inserted by the Indian Penal Code Amendment Act (XXVII. of 1870), s. 9.

Chaps. IV. and V. of the Code apply to offences punishable under ss. 225A and 225B.—See the Indian Penal Code Amendment Act (XXVII. of 1870), s. 13, as amended by the Repealing and Amending Act (XII. of 1891).

self, or of any other person, or escapes or attempts to escape from any custody in which he is lawfully detained, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

226. Whoever, having been lawfully transported, returns from Unlawful return from such transportation, the term of such transportation not having expired, and his punishment not having been remitted, shall be punished with transportation for life, and shall also be liable to fine, and to be imprisoned with rigorous imprisonment for a term not exceeding three years before he is so transported.

227. Whoever, having accepted any conditional remission Violation of condition of of punishment, knowingly violates any remission of punishment. condition on which such remission was granted, shall be punished with the punishment to which he was originally sentenced if he has already suffered no part of that punishment, and, if he has suffered any part of that punishment, then with so much of that punishment as he has not already suffered.

228. Whoever intentionally offers any insult, or causes any Intentional insult or interruption to public servant such public servant is sitting in any stage of a judicial proceeding, shall be interrupted, to any public servant, while sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

229. Whoever, by personation or otherwise, shall intentionally Personation of a juror or cause or knowingly suffer himself to be assessor. returned, empannelled, or sworn as a juror or assessor in any case in which he knows that he is not entitled by law to be so returned, empannelled, or sworn, or knowing himself to have been so returned, empannelled, or sworn contrary to law, shall voluntarily serve on such jury, or as such assessor, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

CHAPTER XII.*

OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.

230. Coin is metal used for the time being as money, and stamped and issued by the authority of some State or Sovereign Power in order to be so used.†

“Coin” defined.

Queen’s coin is metal stamped and issued by the authority of the Queen. or by the authority of the Government of India, or of the Government of any Presidency, or of any Government in the Queen’s dominions, in order to be used as money; and metal which has been so stamped and issued shall continue to be the Queen’s coin for the purposes of this chapter, notwithstanding that it may have ceased to be used as money.‡

Queen’s coin.

Illustratio ns.

- (a.) Cowries are not coin.
- (b.) Lumps of unstamped copper, though used as money, are not coin.
- (c.) Medals are not coin, inasmuch as they are not intended to be used as money.
- (d.) The coin denominated as the Company’s rupee is the Queen’s coin.
- (e.)§ The ‘Farukhabad’ rupee, which was formerly used as money under the authority of the Government of India, is Queen’s coin, although it is no longer so used.

231. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Counterfeiting coin.

* As to enhanced punishment for second conviction for certain offences under Ch. XII., *see* s. 75, *supra*.

† In s. 230, the first paragraph has been substituted, by the Indian Penal Code Amendment Act (XIX. of 1872), for the one originally enacted.

‡ In s. 230, the second paragraph has been substituted, by the Indian Penal Code Amendment Act (VI. of 1896), s. 1 (1), for the one which had been substituted for the original by the Indian Penal Code Amendment Act (XIX. of 1872).

§ In s. 230, *Ill. (e)* has been added by the Indian Penal Code Amendment Act (VI. of 1896), s. 1 (2).

Explanation.—A person commits this offence who, intending to practise deception, or knowing it to be likely that deception will thereby be practised, causes a genuine coin to appear like a different coin.

232. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, the Queen's coin, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

233. Whoever makes or mends, or performs any part of the process of making or mending, or buys, sells, disposes of, any die or instrument for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

234. Whoever makes or mends, or performs any part of the process of making or mending, or buys, sells, or disposes of, any die or instrument for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting the Queen's coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

235. Whoever is in possession of any instrument or material for the purpose of using the same for counterfeiting coin, or knowing or having reason to believe that the same is intended to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine,

and, if the coin to be counterfeited is the Queen's coin, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

236. Whoever, being within British India, abets the counterfeiting of coin out of British India, shall be punished in the same manner as if he abetted the counterfeiting of such coin within British India.

237. Whoever imports into British India, or exports therefrom, any counterfeit coin, knowing or having reason to believe that the same is counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

238. Whoever imports into British India, or exports therefrom, any counterfeit coin which he knows, or has reason to believe, to be a counterfeit of the Queen's coin, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

239. Whoever, having any counterfeit coin, which, at the time when he became possessed of it, he knew to be counterfeit, fraudulently, or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

240. Whoever, having any counterfeit coin which is a counterfeit of the Queen's coin, and which, at the time when he became possessed of it, he knew to be a counterfeit of the Queen's coin, fraudulently, or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

241. Whoever delivers to any other person as genuine, or attempts to induce any other person to receive as genuine, any counterfeit coin which he knows to be counterfeit, but which he did not know to be counterfeit at the time when he took it into his possession, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin counterfeited, or with both.

Illustration.

A, a coiner, delivers counterfeit Company's rupees to his accomplice *B* for the purpose of uttering them. *B* sells the rupees to *C*, another utterer,

who buys them, knowing them to be counterfeit. *C* pays away the rupees for goods to *D*, who receives them, not knowing them to be counterfeit. *D*, after receiving the rupees, discovers that they are counterfeit, and pays them away as if they were good : Here *D* is punishable only under this section, but *B* and *C* are punishable under section 239 or 240, as the case may be.

242. Whoever fraudulently, or with intent that fraud may be committed, is in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

243. Whoever fraudulently, or with intent that fraud may be committed, is in possession of counterfeit coin, which is a counterfeit of the Queen's coin, having known at the time when he became possessed of it that it was counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

244. Whoever, being employed in any mint lawfully established in British India, does any act, or omits what he is legally bound to do, with the intention of causing any coin issued from that mint to be of a different weight or composition from the weight or composition fixed by law, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

245. Whoever, without lawful authority, takes out of any mint lawfully established in British India any coining tool or instrument, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

246. Whoever fraudulently or dishonestly performs on any coin any operation which diminishes the weight or alters the composition of that coin shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation.—A person who scoops out part of the coin, and puts anything else into the cavity, alters the composition of that coin

247. Whoever fraudulently or dishonestly performs on any of the Queen's coin any operation which diminishes the weight or alters the composition of that coin shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

248. Whoever performs on any coin any operation which alters the appearance of that coin with the intention that the said coin shall pass as a coin of a different description shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

249. Whoever performs on any of the Queen's coin any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

250. Whoever, having coin in his possession with respect to which the offence defined in section 246 or 248 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently, or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

251. Whoever, having coin in his possession with respect to which the offence defined in section 247 or 249 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently, or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

252. Whoever fraudulently, or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the sections 246 or 248 has been committed, having known at the time of becoming possessed thereof that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

253. Whoever fraudulently, or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the sections 247 or 249 has been committed, having known at the time of becoming possessed thereof that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

254. Whoever delivers to any other person as genuine, or as a coin of a different description from what it is, or attempts to induce any person to receive as genuine, or as a different coin from what it is, any coin in respect of which he knows that any such operation as that mentioned in section 246, 247, 248, or 249, has been performed, but in respect of which he did not, at the time when he took it into his possession, know that such operation had been performed, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin for which the altered coin is passed or attempted to be passed.

255. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any stamp issued by Government* for the purpose of revenue, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—A person commits this offence who counterfeits by causing a genuine stamp of one denomination to appear like a genuine stamp of a different denomination.

* As to meaning of "Government," see s. 263A (4), *infra*.

256. Whoever has in his possession any instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government* for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Having possession of instrument or material for counterfeiting Government stamp.

257. Whoever makes, or performs any part of the process of making, or buys, or sells, or disposes of any instrument for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government* for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Making or selling instrument for counterfeiting Government stamp.

258. Whoever sells, or offers for sale, any stamp which he knows or has reason to believe to be a counterfeit of any stamp issued by Government* for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Sale of counterfeit Government stamp.

259. Whoever has in his possession any stamp which he knows to be a counterfeit of any stamp issued by Government* for the purpose of revenue, intending to use or dispose of the same as a genuine stamp, or in order that it may be used as a genuine stamp, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Having possession of counterfeit Government stamp.

260. Whoever uses as genuine any stamp, knowing it to be a counterfeit of any stamp issued by Government* for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Using as genuine a Government stamp known to be counterfeit.

* As to meaning of "Government," see s. 263A (4), *infra*.

261. Whoever fraudulently, or with intent to cause loss to Government, removes or effaces from any substance bearing any stamp issued by Government* for the purpose of revenue, any writing or document for which such stamp has been used, or removes from any writing or document a stamp which has been used for such writing or document, in order that such stamp may be used for a different writing or document, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

262. Whoever fraudulently, or with intent to cause loss to Government,* uses for any purpose a stamp issued by Government* for the purpose of revenue, which he knows to have been before used, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

263. Whoever fraudulently, or with intent to cause loss to Government,* erases or removes from a stamp issued by Government* for the purpose of revenue any mark put or impressed upon such stamp for the purpose of denoting that the same has been used, or knowingly has in his possession, or sells or disposes of, any such stamp from which such mark has been erased or removed, or sells or disposes of any such stamp which he knows to have been used, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Prohibition of fictitious stamps.

263A.† (1) Whoever—

- (a) makes, knowingly utters, deals in, or sells any fictitious stamps, or knowingly uses for any postal purpose any fictitious stamp, or
- (b) has in his possession, without lawful excuse, any fictitious stamp, or
- (c) makes, or, without lawful excuse, has in his possession, any die, plate, instrument, or materials for making any fictitious stamp,

* As to meaning of "Government," see s. 263A (4), *infra*.

† S. 263A has been added by the Indian Criminal Law Amendment Act (III. of 1895), s. 2.

shall be punished with fine which may extend to two hundred rupees.

(2) Any such stamp, die, plate, instrument, or materials in the possession of any person for making any fictitious stamp may be seized, and shall be forfeited.

(3) In this section 'fictitious stamp' means any stamp falsely purporting to be issued by Government for the purpose of denoting a rate of postage, or any facsimile or imitation or representation, whether on paper or otherwise, of any stamp issued by Government for that purpose.

(4) In this section and also in sections 255 to 263 (both inclusive), the word 'Government,' when used in connection with, or in reference to, any stamp issued for the purpose of denoting a rate of postage, shall, notwithstanding anything in section 17, be deemed to include the person or persons authorized by law to administer executive government in any part of India, and also in any part of Her Majesty's dominions, or in any foreign country.

CHAPTER XIII.

OF OFFENCES RELATING TO WEIGHTS AND MEASURES.

264. Whoever fraudulently uses any instrument for weighing, which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

265 Whoever fraudulently uses any false weight or false measure of length or capacity, or fraudulently uses any weight or any measure of length or capacity, as a different weight or measure from what it is, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

266. Whoever is in possession of any instrument for weighing, or of any weight, or of any measure of length or capacity, which he knows to be false, and intending that the same may be fraudulently used, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

267. Whoever makes, sells, or disposes of any instrument for
 Making or selling false weighing, or any weight, or any measure
 weights or measures. of length or capacity, which he knows
 to be false, in order that the same may be used as true, or know-
 ing that the same is likely to be used as true, shall be punished
 with imprisonment of either description for a term which may
 extend to one year, or with fine, or with both.

CHAPTER XIV.

OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE DECENCY, AND MORALS.

268.* A person is guilty of a public nuisance who does any
 Public nuisance. act, or is guilty of an illegal omission,
 which causes any common injury, dan-
 ger, or annoyance to the public, or to the people in general, who
 dwell or occupy property in the vicinity, or which must necessarily
 cause injury, obstruction, danger, or annoyance to persons who
 may have occasion to use any public right.

A common nuisance is not excused on the ground that it
 causes some convenience or advantage.

269. Whoever unlawfully or negligently does any act which
 Negligent act likely to is, and which he knows or has reason to
 spread infection of any dis- believe to be, likely to spread the infec-
 ease dangerous to life. tion of any disease dangerous to life,
 shall be punished with imprisonment of either description for a
 term which may extend to six months, or with fine, or with both.

270. Whoever maliciously does any act which is, and which
 Malignant act likely to he knows or has reason to believe to be,
 spread infection of any dis- likely to spread the infection of any
 ease dangerous to life. disease dangerous to life, shall be punish-
 ed with imprisonment of either description for a term which may
 extend to two years, or with fine, or with both.

* The definition of "public nuisance" here given applies in the case
 of all Acts of the Governor-General in Council and Regulations under
 Stat. 33 Vict., c. 3, s. 1, made after 14th January 1887.—See the General
 Clauses Act (X. of 1897), s. 3. (44) and s. 4 (2).

As to procedure in case of public nuisances, see the Code of Criminal
 Procedure (Act V. of 1898), Ch. X., s. 133, *et seq.*

271. Whoever knowingly disobeys any rule made and promulgated by the Government of India, or by any Government, for putting any vessel into a state of quarantine,* or for regulating the intercourse of vessels in a state of quarantine with the shore, or with other vessels, or for regulating the intercourse between places where an infectious disease prevails and other places, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

272.† Whoever adulterates any article of food or drink so as to make such article noxious as food or drink intended for sale. drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

273.† Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

274.† Whoever adulterates any drug or medical preparation in such a manner as to lessen the efficacy or change the operation of such drug or medical preparation, or to make it noxious, intending that it shall be sold or used for, or knowing it to be likely that it will be sold or used for, any medicinal purpose, as if it had not undergone such adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

275.† Whoever, knowing any drug or medical preparation to have been adulterated in such a manner as to lessen its efficacy, to change its

* For power to make rules relating to quarantine, *see* the Indian Quarantine Act (I. of 1870).

† For power to order destruction of the food or other thing in respect of which a conviction is had under ss. 272-275, *see* the Code of Criminal Procedure (Act V. of 1898), s. 521 (2).

operation, or to render it noxious, sells the same, or offers or exposes it for sale, or issues it from any dispensary for medicinal purposes, as unadulterated, or causes it to be used for medicinal purposes by any person not knowing of the adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

276. Whoever knowingly sells, or offers or exposes for sale, or issues from a dispensary for medicinal purposes, any drug or medical preparation as a different drug or medical preparation, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

277. Whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

278. Whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood, or passing along a public way, shall be punished with fine which may extend to five hundred rupees.

279. Whoever drives any vehicle, or rides, on any public way, in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

280. Whoever navigates any vessel in a manner so rash or negligent as to endanger human life, or to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

281. Whoever exhibits any false light, mark, or buoy, intending or knowing it to be likely that such exhibition will mislead any navigator, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

282. Whoever knowingly or negligently conveys, or causes to be conveyed, for hire, any person by Conveying person by water for hire in unsafe or overloaded vessel. water, in any vessel, when that vessel is in such a state or so loaded as to endanger the life of that person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

283. Whoever, by doing any act, or by omitting to take Danger or obstruction in a public way or navigation. order with any property in his possession or under his charge, causes danger, obstruction, or injury to any person in any public way or public line of navigation, shall be punished with fine which may extend to two hundred rupees.

284. Whoever does, with any poisonous substance, any act Negligent conduct with respect to poisonous substance. in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any person,

or knowingly or negligently omits to take such order with any poisonous substance in his possession as is sufficient to guard against probable danger to human life from such poisonous substance,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

285. Whoever does, with fire or any combustible matter, any act so rashly or negligently as to Negligent conduct with respect to fire or combustible matter. endanger human life, or to be likely to cause hurt or injury to any other person,

or knowingly or negligently omits to take such order with any fire or any combustible matter in his possession as is sufficient to guard against any probable danger to human life from such fire or combustible matter,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

286. Whoever does, with any explosive substance, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person,

Negligent conduct with respect to explosive substance. or knowingly or negligently omits to take such order with any explosive substance in his possession as is sufficient to guard against any probable danger to human life from that substance,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

287. Whoever does, with any machinery, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any machinery in his possession or under his care as is sufficient to guard against any probable danger to human life from such machinery, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

288. Whoever, in pulling down or repairing any building, knowingly or negligently omits to take such order with that building as is sufficient to guard against any probable danger to human life from the fall of that building, or of any part thereof, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

289. Whoever knowingly or negligently omits to take such order with any animal in his possession as is sufficient to guard against any probable danger to human life, or any probable danger of grievous hurt from such animal, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

290. Whoever commits a public nuisance in any case not otherwise punishable by this Code shall be punished with fine which may extend to two hundred rupees.

Punishment for public nuisance in cases not otherwise provided for.

291. Whoever repeats or continues a public nuisance, having been enjoined by any public servant who has lawful authority to issue such injunction not to repeat or continue such nuisance, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

292.* Whoever sells or distributes, imports, or prints for sale or hire, or wilfully exhibits to public view, any obscene book, pamphlet, paper, drawing, painting, representation, or figure, or attempts or offers so to do, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Exception.—This section does not extend to any representation sculptured, engraved, painted, or otherwise represented, on or in any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose.

293.* Whoever has in his possession any such obscene book or other thing as is mentioned in the last preceding section for the purpose of sale, distribution, or public exhibition, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

294.† Whoever, to the annoyance of others—

(a) does any obscene act in any public place, or

(b) sings, recites, or utters any obscene song, ballad, or words in or near any public place,

shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

* For power to order the destruction of copies of the thing in respect of which a conviction under s. 292 or s. 293 is had, see the Code of Criminal Procedure (Act V. of 1898), s. 521.

† S. 294 has been substituted for the original by the Indian Criminal Law Amendment Act (III. of 1895), s. 3.

294A.* Whoever keeps any office or place for the purpose of drawing any lottery not authorized by Government shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both ;

and whoever publishes any proposal to pay any sum, or to deliver any goods, or to do or forbear doing anything for the benefit of any person, on any event or contingency relative or applicable to the drawing of any ticket, lot, number, or figure in any such lottery, shall be punished with fine which may extend to one thousand rupees.

CHAPTER XV.

OF OFFENCES RELATING TO RELIGION.

295. Whoever destroys, damages, or defiles any place of worship, or any object held sacred by any class of persons, with the intention of thereby insulting the religion of any class of persons, or with the knowledge that any class of persons is likely to consider such destruction, damage, or defilement as an insult to their religion, shall be punished with imprisonment of either description for a term which may extend to two years, or, with fine, or with both.

296. Whoever voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship or religious ceremonies shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

297. Whoever, with the intention of wounding the feelings of any person, or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby,

* S. 294A has been inserted by the Indian Penal Code Amendment Act (XXVII. of 1870), s. 10

As to authority for instituting prosecutions under s. 294A, see the Code of Criminal Procedure (Act V. of 1898), s. 196.

Chaps. IV., V., and XXIII. of the Code apply to offences punishable under s. 294A.—See the Indian Penal Code Amendment Act (XXVII. of 1870), s. 13.

commits any trespass in any place of worship, or on any place of sepulture, or any place set apart for the performance of funeral rites, or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any persons assembled for the performance of funeral ceremonies,

shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

298.* Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person, or makes any gesture in the sight of that person, or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

CHAPTER XVI †

OF OFFENCES AFFECTING THE HUMAN BODY.

Of Offences affecting Life.

299. Whoever causes death by doing an act with the intention or causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely, by such act, to cause death, commits the offence of culpable homicide.

* Offences punishable under s. 298 are compoundable.—See the Code of Criminal Procedure (Act V of 1898), s. 345. As to the stage of proceedings at which no composition is allowed without the leave of the Court see cl. (5) of s. 345 aforesaid.

† As to duty to give information of offences punishable under s. 302, 303, or 304, see the Code of Criminal Procedure (Act V. of 1898), s. 44. See also (as to offence punishable under s. 302 or 304) s. 45 of the Code, and (as to murder and culpable homicide not amounting to murder) s. 45 of the Code as amended for Burma by Upper Burma Village Regulation (XIV. of 1887), s. 4, and the Lower Burma Village Act (III. of 1889), s. 5.

As to punishment for offences under ss. 302, 304, 307, and 308 enquired into by a Council of Elders in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), s. 14.

Illustrations.

(a.) *A* lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. *Z*, believing the ground to be firm, treads on it, falls in, and is killed: *A* has committed the offence of culpable homicide.

(b.) *A* knows *Z* to be behind a bush. *B* does not know it. *A*, intending to cause, or knowing it to be likely to cause, *Z*'s death, induces *B* to fire at the bush. *B* fires, and kills *Z*: Here *B* may be guilty of no offence; but *A* has committed the offence of culpable homicide.

(c.) *A*, by shooting at a fowl with intent to kill and steal it, kills *B*, who is behind a bush, *A* not knowing that he was there: Here, although *A* was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill *B*, or to cause death by doing an act that he knew was likely to cause death.

Explanation 1.—A person who causes bodily injury to another, who is labouring under a disorder, disease, or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

Explanation. 2.—Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although, by resorting to proper remedies and skilful treatment, the death might have been prevented.

Explanation 3.—The causing of the death of a child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child if any part of that child has been brought forth, though the child may not have breathed or been completely born.

300. Except in the cases hereinafter excepted, culpable homicide is murder if the act by which the death is caused is done with the intention of causing death, or,

2ndly, if it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or,

3rdly, if it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient, in the ordinary course of nature, to cause death, or,

4thly, if the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Illustrations.

(a.) *A* shoots *Z* with the intention of killing him. *Z* dies in consequence : *A* commits murder,

(b.) *A*, knowing that *Z* is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. *Z* dies in consequence of the blow : *A* is guilty of murder, although the blow might not have been sufficient, in the ordinary course of nature, to cause the death of a person in a sound state of health. But, if *A*, not knowing that *Z* is labouring under any disease, gives him such a blow as would not, in the ordinary course of nature, kill a person in a sound state of health, here *A*, although he may intend to cause bodily injury, is not guilty of murder if he did not intend to cause death or such bodily injury as, in the ordinary course of nature, would cause death.

(c.) *A* intentionally gives *Z* a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. *Z* dies in consequence : Here, *A* is guilty of murder, although he may not have intended to cause *Z*'s death.

(d.) *A*, without any excuse, fires a loaded cannon into a crowd of persons, and kills one of them : *A* is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

Exception 1.—Culpable homicide is not murder if the offender, When culpable homicide whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation, or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos :*

Firstly—That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person :

Secondly—That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant :

Thirdly—That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation.—Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Illustrations.

(a.) *A*, under the influence of passion excited by a provocation given by *Z*, intentionally kills *Y*, *Z*'s child : This is murder, inasmuch as the pro-

* As to the application of these provisos in the case of causing hurt on provocation, see s. 335, *Explanation, infra*.

vocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.

(b.) *Y* gives grave and sudden provocation to *A*. *A*, on this provocation, fires a pistol at *Y*, neither intending nor knowing himself to be likely to kill *Z*, who is near him, but out of sight. *A* kills *Z*: Here *A* has not committed murder, but merely culpable homicide.

(c.) *A* is lawfully arrested by *Z*, a balliff. *A* is excited to sudden and violent passion by the arrest, and kills *Z*. This is murder, inasmuch as the provocation was given by a thing done by a public servant in the exercise of his powers.

(d.) *A* appears as a witness before *Z*, a Magistrate. *Z* says that he does not believe a word of *A*'s deposition, and that *A* has perjured himself. *A* is moved to sudden passion by these words, and kills *Z*: This is murder.

(e.) *A* attempts to pull *Z*'s nose. *Z*, in the exercise of the right of private defence, lays hold of *A* to prevent him from doing so. *A* is moved, to sudden and violent passion in consequence, and kills *Z*: This is murder, inasmuch as the provocation was given by a thing done in the exercise of the right of private defence.

(f.) *Z* strikes *B*. *B* is, by this provocation, excited to violent rage. *A*, a bystander, intending to take advantage of *B*'s rage, and to cause him to kill *Z*, puts a knife into *B*'s hand for that purpose. *B* kills *Z* with the knife: Here *B* may have committed only culpable homicide, but *A* is guilty of murder.

Exception 2.—Culpable homicide is not murder if the offender, in the exercise, in good faith, of the right of private defence of person or property, exceeds the power given to him by law, and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Illustration.

Z attempts to horsewhip *A*, not in such a manner as to cause grievous hurt to *A*. *A* draws out a pistol. *Z* persists in the assault. *A*, believing in good faith that he can by no other means prevent himself from being horsewhipped, shoots *Z* dead: *A* has not committed murder, but only culpable homicide.

Exception 3.—Culpable homicide is not murder if the offender, being a public servant, or aiding a public servant, acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant, and without ill-will towards the person whose death is caused.

Exception 4.—Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel, and without the offender's having taken undue advantage, or acted in a cruel or unusual manner.

Explanation.—It is immaterial in such cases which party offers the provocation, or commits the first assault.

Exception 5.—Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death, or takes the risk of death, with his own consent.

Illustration.

A. by instigation, voluntarily causes *Z*, a person under eighteen years of age, to commit suicide : Here, on account of *Z*'s youth, he was incapable of giving consent to his own death : *A* has therefore abetted murder.

301. If a person, by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause.

302. Whoever commits murder shall be punished with death or transportation for life, and shall also be liable to fine.

303. Whoever, being under sentence of transportation for life, commits murder, shall be punished with death.

304. Whoever commits culpable homicide not amounting to murder shall be punished with transportation for life or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death ; or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

304A.* Whoever causes the death of any person by doing
 Causing death by negli- any rash or negligent act not amounting
 gence. to culpable homicide shall be punished
 with imprisonment of either description for a term which may
 extend to two years, or with fine, or with both.

305. If any person under eighteen years of age, any insane
 Abetment of suicide of person, any delirious person, any idiot,
 child or insane person. or any person in a state of intoxication
 commits suicide, whoever abets the commission of such suicide
 shall be punished with death or transportation for life, or imprison-
 ment for a term not exceeding ten years, and shall also be liable
 to fine.

306. If any person commits suicide, whoever abets the
 Abetment of suicide. commission of such suicide shall be
 punished with imprisonment of either
 description for a term which may extend to ten years, and shall
 also be liable to fine.

307. Whoever does any act with such intention or knowledge,
 Attempt to murder. and under such circumstances, that,
 if he, by that act, caused death, he would
 be guilty of murder, shall be punished with imprisonment of either
 description for a term which may extend to ten years, and shall
 also be liable to fine; and, if hurt is caused to any person by such
 act, the offender shall be liable either to transportation for life, or
 to such punishment as is hereinbefore mentioned.

When any person offending under this section is under sen-
 tence of transportation for life, he may,
 Attempts by life-convicts. if hurt is caused, be punished with
 death.†

Illustrations.

(a.) A shoots at Z with intention to kill him under such circumstances
 that, if death ensued, A would be guilty of murder : A is liable to punish-
 ment under this section.

* S. 304A has been inserted by the Indian Penal Code Amendment
 Act (XXVII. of 1870), s. 12. Chaps. IV., V., and XXIII. of the Code
 apply to an offence punishable under s. 304A.—See Act XXVII. of 1870, s.
 13.

† This clause has been added by the Indian Penal Code Amendment
 Act (XXVII. of 1870), s. 11.

(b.) *A*, with the intention of causing the death of a child of tender years, exposes it in a desert place: *A* has committed the offence defined in this section, though the death of the child does not ensue.

(c.) *A*, intending to murder *Z*, buys a gun, and loads it. *A* has not yet committed the offence. *A* fires the gun at *Z*: He has committed the offence defined in this section; and if, by such firing, he wounds *Z*, he is liable to the punishment provided by the latter part of *the first paragraph of** this section.

(d.) *A*, intending to murder *Z* by poison, purchases poison, and mixes the same with food which remains in *A*'s keeping. *A* has not yet committed the offence defined in this section. *A* places the food on *Z*'s table, or delivers it to *Z*'s servants to place it on *Z*'s table: *A* has committed the offence defined in this section.

308. Whoever does any act with such intention or knowledge, Attempt to commit culp- and under such circumstances, that, if able homicide. he, by that act, caused death, he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Illustration.

A, on grave and sudden provocation, fires a pistol at *Z* under such circumstances that, if he thereby caused death, he would be guilty of culpable homicide not amounting to murder: *A* has committed the offence defined in this section.

309. Whoever attempts to commit suicide, and does any act Attempt to commit suicide. towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year, "or with fine, or with both."[†]

310. Whoever, at any time after the passing of this Act, shall Thug. have been habitually associated with any other or others for the purpose of committing robbery or child-stealing by means of, or accompanied with, murder, is a thug.

* The words italicized have been inserted by the Repealing and Amending Act (XII. of 1891).

† In s. 309, the words quoted have been substituted by the Indian Penal Code Amendment Act (VIII. of 1892), s. 7, for the words, "and shall also be liable to fine."

311. Whoever is a thug shall be punished with transportation for life, and shall also be liable to fine.

Punishment.

Of the Causing of Miscarriage; of Injuries to Unborn Children; of the Exposure of Infants; and of the Concealment of Births.

312. Whoever voluntarily causes a woman with child to miscarry shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both: and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanation.—A woman who causes herself to miscarry is within the meaning of this section.

313. Whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

314. Whoever, with intent to cause the miscarriage of a woman with child, does any act which causes the death of such woman, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine;

and, if the act is done without the consent of the woman, shall be punished either with transportation for life, or with the punishment above mentioned.

Explanation.—It is not essential to this offence that the offender should know that the act is likely to cause death.

315. Whoever, before the birth of any child, does any act with the intention of thereby preventing that child from being born alive, or causing it to die after its birth, and does, by such act, prevent that child from

Act done with intent to prevent child being born alive, or to cause it to die after birth.

being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

316. Whoever does any act under such circumstances that, if he thereby caused death, he would be guilty of culpable homicide, and does, by such act, cause the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Illustration.

A, knowing that he is likely to cause the death of a pregnant woman, does an act which, if it caused the death of the woman, would amount to culpable homicide. The woman is injured, but does not die; but the death of an unborn quick child with which she is pregnant is thereby caused: A is guilty of the offence defined in this section.

317. Whoever, being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Explanation.—This section is not intended to prevent the trial of the offender for murder or culpable homicide, as the case may be, if the child die in consequence of the exposure.

318. Whoever, by secretly burying, or otherwise disposing of, the dead body of a child, whether such child die before or after, or during, its birth, intentionally conceals, or endeavours to conceal, the birth of such child, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

*Of Hurt.**

319. Whoever causes bodily pain, disease, or infirmity to any person is said to cause hurt.

* As to the application of ss. 327-331 to offences under special local laws, see s. 40, *supra*.—See notes at the foot of next page.

Grievous hurt. **320.** The following kinds of hurt only are designated as "grievous :"—

- First*—Emasculation ;
- secondly*—permanent privation of the sight of either eye ;
- thirdly*—permanent privation of the hearing of either ear ;
- fourthly*—privation of any member or joint ;
- fifthly*—destruction or permanent impairing of the powers of any member or joint ;
- sixthly*—permanent disfiguration of the head or face ;
- seventhly*—fracture or dislocation of a bone or tooth ;
- eighthly*—any hurt which endangers life, or which causes the sufferer to be, during the space of twenty days, in severe bodily pain, or unable to follow his ordinary pursuits.

321. Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said "voluntarily to cause hurt."

322. Whoever voluntarily causes hurt, if the hurt which he intends to cause, or knows himself to be likely to cause, is grievous hurt, and if the hurt which he causes is grievous hurt, is said "voluntarily to cause grievous hurt."

Explanation.—A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt, and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt if, intending or knowing himself

Offences punishable under ss 323 and 334 are compoundable, and those punishable under ss 324, 325, 335, 337. and 338 may be compounded with the permission of the Court—*See* the Code of Criminal Procedure (Act V. of 1898), s. 345. As to stage of proceedings at which no composition is allowed without the leave of the Court, *see* sub-s. (5), s. 345, *afore-said*.

As to whipping in a Punjab Frontier District or in Baluchistan for offences punishable under ss. 325 and 326, *see* the Punjab Frontier Crimes Regulation (IV. of 1887), s. 8.

As to punishment for offences under ss 325, 326, and 328, enquired into by a Council of Elders in a Punjab Frontier District or in Baluchistan, *see* the Punjab Frontier Crimes Regulation (IV. of 1887), s. 14.

to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.

Illustration.

A, intending or knowing himself to be likely permanently to disfigure Z's face, gives Z a blow which does not permanently disfigure Z's face, but which causes Z to suffer severe bodily pain for the space of twenty days : A has voluntarily caused grievous hurt.

323. Whoever, except in the case provided for by section 334, voluntarily causes hurt shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

324. Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any dangerous weapons or means. instrument for shooting, stabbing, or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

325. Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

326. Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing, or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

327.* Whoever voluntarily causes hurt for the purpose of

Voluntarily causing hurt to extort property, or to constrain to an illegal act. extorting from the sufferer, or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything which is illegal, or which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

328.* Whoever administers to, or causes to be taken by, any

Causing hurt by means of poison, &c., with intent to commit an offence. person any poison or any stupefying, intoxicating, or unwholesome drug or other thing, with intent to cause hurt to such person, or with intent to commit, or to facilitate the commission of, an offence, or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

329.* Whoever voluntarily causes grievous hurt for the purpose of

Voluntarily causing grievous hurt to extort property or to constrain to an illegal act. purpose of extorting from the sufferer, or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything that is illegal, or which may facilitate the commission of an offence, shall be punished with transportation for life or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

330.* Whoever voluntarily causes hurt for the purpose of ex-

Voluntarily causing hurt to extort confession, or to compel restoration of property. torting from the sufferer, or from any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore, or to cause the restoration of, any property or valuable security, or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

* In ss. 327 to 330, the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in ss. 41 and 42 of this Code.—See s. 40 of this Code, *supra*.

Illustrations.

(a.) *A*, a police-officer, tortures *Z* in order to induce *Z* to confess that he committed a crime : *A* is guilty of an offence under this section

(b.) *A*, police-officer, tortures *B* to induce him to point out where certain stolen property is deposited : *A* is guilty of an offence under this section.

(c.) *A*, a revenue-officer, tortures *Z* in order to compel him to pay certain arrears of revenue due from *Z* : *A* is guilty of an offence under this section.

(d.) *A*, a zemindar, tortures a raiyat in order to compel him to pay his rent : *A* is guilty of an offence under this section.

331.* Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore, or to cause the restoration of, any property or valuable security, or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

332. Whoever voluntarily causes hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

333. Whoever voluntarily causes grievous hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such

* In s. 331, the word " offence " denotes a thing punishable under this Code, or under any special or local law as defined in ss. 41 and 42 of this Code.—See s. 40 of this Code, *supra*.

public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

334. Whoever voluntarily causes hurt on grave and sudden provocation,* if he neither intends nor knows himself to be likely to cause hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

335. Whoever "voluntarily"† causes grievous hurt on grave and sudden provocation,* if he neither intends nor knows himself to be likely to cause grievous hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to four years, or with fine which may extend to two thousand rupees, or with both.

Explanation.—The last two sections are subject to the same provisos as *Exception 1*, section 300.

336. Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two-hundred-and-fifty rupees, or with both.

337. Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

* As to provocation in this and the following section (335), see *Explanation* to the latter, *infra*.

† In s. 335, the word quoted has been inserted by the Indian Penal Code Amendment Act (VIII. of 1882), s. 8.

338. Whoever causes grievous hurt to any person by doing
 Causing grievous hurt by any act so rashly or negligently as to en-
 act endangering life or per- danger human life or the personal safety
 sonal safety of others. of others shall be punished with imprison-
 ment of either description for a term which may extend to two
 years, or with fine which may extend to one thousand rupees, or
 with both.

*Of Wrongful Restraint and Wrongful Confinement.**

339. Whoever voluntarily obstructs any person, so as to pre-
 vent that person from proceeding in any
 Wrongful restraint. direction in which that person has a
 right to proceed, is said wrongfully to restrain that person.

Exception.—The obstruction of a private way over land or
 water, which a person, in good faith, believes himself to have a
 lawful right to obstruct, is not an offence within the meaning of this
 section.

Illustration.

A obstructs a path along which Z has a right to pass, A not believing
 in good faith that he has a right to stop the path. Z is thereby prevented
 from passing : A wrongfully restrains Z.

340. Whoever wrongfully restrains any person in such a
 manner as to prevent that person from
 Wrongful confinement. proceeding beyond certain circumscrib-
 ing limits is said “wrongfully to confine” that person.

Illustrations.

(a) A causes Z to go within a walled space, and locks Z in. Z is
 thus prevented from proceeding in any direction beyond the circumscrib-
 ing line of wall : A wrongfully confines Z.

(b.) A places men with fire-arms at the outlets of a building, and tells
 Z that they will fire at Z if Z attempts to leave the building : A wrong-
 fully confines Z.

341. Whoever wrongfully restrains any person shall be
 Punishment for wrongful punished with simple imprisonment for
 restraint. a term which may extend to one month,
 or with fine which may extend to five hundred rupees, or with both.

* As to the application of ss. 347 and 348 to offences under special or
 local laws, see s. 40, *supra*.

342. Whoever wrongfully confines any person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

343. Whoever wrongfully confines any person for three days or more shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

344. Whoever wrongfully confines any person for ten days or more shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

345. Whoever keeps any person in wrongful confinement, knowing that a writ for the liberation of that person has been duly issued, shall be punished with imprisonment of either description for a term which may extend to two years in addition to any term of imprisonment to which he may be liable under any other section of this chapter.

346. Whoever wrongfully confines any person in such manner as to indicate an intention that the confinement of such person may not be known to any person interested in the person so confined, or to any public servant, or that the place of such confinement may not be known to, or discovered by, any such person or public servant as hereinbefore mentioned, shall be punished with imprisonment of either description for a term which may extend to two years in addition to any other punishment to which he may be liable for such wrongful confinement.

347.* Whoever wrongfully confines any person for the purpose of extorting from the person confined, or from any person interested in the person confined, any property or valuable security, or of constraining the person confined, or any person interested in such person, to do anything illegal, or to give

* In s. 347, the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in ss. 41 and 42 of this Code.—See s. 40 of this Code, *supra*.

any information which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

348.* Whoever wrongfully confines any person for the purpose of extorting from the person confined, or any person interested in the person confined, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the person confined, or any person interested in the person confined, to restore, or cause the restoration of, any property or valuable security, or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Of Criminal Force and Assault.†

349. A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling :

Provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion, in one of the three ways hereinafter described :—

First—By his own bodily power :

* In s. 345, the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in ss. 41 and 42 of this Code.—See s. 40 of this Code, *supra*.

† Offences punishable under ss. 352, 355, and 358 are compoundable.—See the Code of Criminal Procedure (Act V. of 1898), s. 345. As to stage of proceedings at which no composition is allowable without the leave of the Court, see *ibid*, sub-s. (5).

As to punishment for an offence under s. 354, enquired into by a Council of Elders in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), s. 14.

Secondly—By disposing any substance in such a manner that the motion or change or cessation of motion takes place without any further act on his part, or on the part of any other person :

Thirdly—By inducing any animal to move, to change its motion, or to cease to move.

350. Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending, by the use of such force, to cause, or knowing it to be likely that, by the use of such force, he will cause, injury, fear, or annoyance to the person to whom the force is used, is said to use criminal force to that other.

Illustrations.

(a.) *Z* is sitting in a moored boat on a river. *A* unfastens the mooring, and thus intentionally causes the boat to drift down the stream : Here *A* intentionally causes motion to *Z*, and he does this by disposing substances in such a manner that the motion is produced without any other act on any person's part. *A* has therefore intentionally used force to *Z* ; and, if he has done so without *Z*'s consent, in order to the committing of any offence, or intending or knowing it to be likely that this use of force will cause injury, fear, or annoyance to *Z*, *A* has used criminal force to *Z*.

(b.) *Z* is riding in a chariot. *A* lashes *Z*'s horses, and thereby causes them to quicken their pace. Here *A* has caused change of motion to *Z* by inducing the animals to change their motion : *A* has therefore used force to *Z* ; and, if *A* has done this without *Z*'s consent, intending or knowing it to be likely that he may thereby injure, frighten, or annoy *Z*, *A* has used criminal force to *Z*.

(c.) *Z* is riding in a palanquin. *A*, intending to rob *Z*, seizes the pole, and stops the palanquin : Here *A* has caused cessation of motion to *Z*, and he has done this by his own bodily power. *A* has therefore used force to *Z*, and, as *A* has acted thus intentionally, without *Z*'s consent, in order to the commission of an offence, *A* has used criminal force to *Z*.

(d.) *A* intentionally pushes against *Z* in the street : Here *A* has, by his own bodily power, moved his own person so as to bring it into contact with *Z*. He has therefore intentionally used force to *Z* ; and, if he has done so without *Z*'s consent intending or knowing it to be likely that he may thereby injure, frighten, or annoy *Z*, he has used criminal force to *Z*.

(e.) *A* throws a stone intending or knowing it to be likely that the stone will be thus brought into contact with *Z*, or with *Z*'s clothes, or with some thing carried by *Z*, or that it will strike water, and dash up the water against *Z*'s clothes or something carried by *Z* : Here, if the throwing of the stone produce the effect of causing any substance to come into contact with *Z* or *Z*'s clothes, *A* has used force to *Z* : and, if he did so without *Z*'s consent, intending thereby to injure, frighten, or annoy *Z*, he has used criminal force to *Z*.

(f.) *A* intentionally pulls up a woman's veil: Here *A* intentionally uses force to her; and, if he does so without her consent, intending or knowing it to be likely that he may thereby injure, frighten, or annoy her, he has used criminal force to her.

(g.) *Z* is bathing. *A* pours into the bath water which he knows to be boiling: Here *A* intentionally, by his own bodily power, causes such motion in the boiling water as brings that water into contact with *Z*, or with other water so situated that such contact must affect *Z*'s sense of feeling: *A* has therefore intentionally used force to *Z*; and if he has done this without *Z*'s consent, intending or knowing it to be likely that he may thereby cause injury, fear, or annoyance to *Z*, *A* has used criminal force.

(h.) *A* incites a dog to spring upon *Z* without *Z*'s consent: Here, if *A* intends to cause injury, fear, or annoyance to *Z*, he uses criminal force to *Z*.

351. Whoever makes any gesture or any preparation, intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

Explanation.—Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparations such a meaning as may make those gestures or preparations amount to an assault.

Illustrations.

(a.) *A* shakes his fist at *Z*, intending or knowing it to be likely that he may thereby cause *Z* to believe that *A* is about to strike *Z*: *A* has committed an assault.

(b.) *A* begins to unloose the muzzle of a ferocious dog, intending or knowing it to be likely that he may thereby cause *Z* to believe that he is about to cause the dog to attack *Z*: *A* has committed an assault upon *Z*.

(c.) *A* takes up a stick, saying to *Z*, "I will give you a beating:" Here, though the words used by *A* could in no case amount to an assault, and though the mere gesture unaccompanied by any other circumstances might not amount to an assault, the gesture explained by the words may amount to an assault.

352. Whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocation given by that person shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Explanation.—Grave and sudden provocation will not mitigate the punishment for an offence under this section if the provocation is sought or voluntarily provoked by the offender as an excuse for the offence ; or

if the provocation is given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant ; or

if the provocation is given by anything done in the lawful exercise of the right of private defence.

Whether the provocation was grave and sudden enough to mitigate the offence is a question of fact.

353. Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done, or attempted to be done, by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

354. Whoever assault, or uses criminal force to any woman, intending to outrage, or knowing it to be likely that he will thereby outrage, her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

355. Whoever assaults or uses criminal force to any person, intending thereby to dishonour that person, otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

356. Whoever assaults or uses criminal force to any person in attempting to commit theft on any property which that person is then wearing or carrying shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

357. Whoever assaults or uses criminal force to any person in attempting wrongfully to confine a person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

358. Whoever assaults or uses criminal force on grave and sudden provocation given by that person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

Explanation.—The last section is subject to the same Explanation as section 352.

*Of Kidnapping, Abduction, Slavery, and Forced Labour.**

359. Kidnapping is of two kinds—kidnapping from British India, and kidnapping from lawful guardianship.

360. Whoever conveys any person beyond the limits of British India without the consent of that person, or of some person legally authorized to consent on behalf of that person, is said to kidnap that person from British India.

361. Whoever takes or entices any minor under fourteen years of age if a male, or under sixteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

Explanation.—The words “lawful guardian” in this section include any person lawfully entrusted with the care or custody of such minor or other person.

* As to punishment for offences under ss. 363 to 369, enquired into by a Council of Elders in a Punjab Frontier District, or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), s. 14.

Offences punishable under s. 374 are compoundable.—See the Code of Criminal Procedure (Act V. of 1898), s. 345. As to stage of proceedings at which no composition is allowable without the leave of the Court, see *ibid*, sub-s. (5).

Exception.—This section does not extend to the act of any person who, in good faith, believes himself to be the father of an illegitimate child, or who, in good faith, believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.

362. Whoever, by force, compels, or, by any deceitful means, induces, any person to go from any place, is said to abduct that person.

Abduction.

363. Whoever kidnaps any person from British India or from lawful guardianship shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Punishment for kidnapping.

364. Whoever kidnaps or abducts any person in order that such person may be murdered, or may be so disposed of as to be put in danger of being murdered, shall be punished with transportation for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Kidnapping or abducting in order to murder.

Illustrations.

(a.) *A* kidnaps *Z* from British India, intending or knowing it to be likely that *Z* may be sacrificed to an idol: *A* has committed the offence defined in this section.

(b.) *A* forcibly carries or entices *B* away from his home in order that *B* may be murdered: *A* has committed the offence defined in this section.

365. Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Kidnapping or abducting with intent secretly and wrongfully to confine person.

366. Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Kidnapping or abducting woman to compel her marriage, &c.

367. Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected, to grievous hurt or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

368. Whoever, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or confines such person, shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge, or for the same purpose, as that with or for which he conceals or detains such person in confinement.

369. Whoever kidnaps or abducts any child under the age of ten years with the intention of taking dishonestly any moveable property from the person of such child shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

370. Whoever imports, exports, removes, buys, sells, or disposes of any person as a slave, or accepts, receives, or detains against his will any person as a slave, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

371. Whoever habitually imports, exports, removes, buys, sells, traffics, or deals in slaves, shall be punished with transportation for life, or with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

372. Whoever sells, lets to hire, or otherwise disposes of any minor under the age of sixteen years with intent that such minor shall be employed or used for the purpose of prostitution, or for any unlawful and immoral purpose, or knowing it to be likely that such minor will be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

373. Whoever buys, hires, or otherwise obtains possession of any minor under the age of sixteen years of prostitution, &c. with intent that such minor shall be employed or used for the purpose of prostitution, or for any unlawful and immoral purpose, or knowing it to be likely that such minor will be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

374. Whoever unlawfully compels any person to labour against the will of that person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

*Of Rape.**

375. A man is said to commit "rape," who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions:—

First—Against her will :

Secondly—Without her consent :

Thirdly—With her consent, when her consent has been obtained by putting her in fear of death or of hurt :

Fourthly—With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is, or believes herself to be, lawfully married :

Fifthly—With or without her consent when she is under twelve† years of age.

Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception.—Sexual intercourse by a man with his own wife, the wife not being under twelve† years of age, is not rape.

* As to whipping, see now the Whipping Act (IV. of 1909) : and, in the Punjab Frontier Districts and Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), s. 8.

As to punishment where an offence is enquired into by a Council of Elders in a Punjab Frontier District, or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), s. 14.

† In s. 375, the word "twelve" has been substituted for the word "ten" by the Indian Criminal Law Amendment Act (X. of 1891), s. 1.

376. Whoever commits rape shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Punishment for rape.

*Of Unnatural Offences.**

377. Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Unnatural offences.

Explanation.—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

CHAPTER XVII.†

OF OFFENCES AGAINST PROPERTY.

Of Theft.‡

378. Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

Theft.

* As to whipping, *see* the Whipping Act (IV. of 1909), and, in the Punjab Frontier Districts and Baluchistan, *see* the Punjab Frontier Crimes Regulation (IV. of 1887), s. 8.

† As to enhanced punishment for second conviction for certain offences under Ch. XVII, *see* s. 75, *supra*.

As to punishment where an offence is enquired into by a Council of Elders in a Punjab Frontier District or in Baluchistan, *see* the Punjab Frontier Crimes Regulation (IV. of 1887), s. 14.

‡ All persons are bound to give information of offences punishable under s. 382.—*See* the Code of Criminal Procedure (Act V. of 1898), s. 44.

As to whipping for offences under ss. 378, 380, 381, 382 *see* the Whipping Act (IV. of 1909) and (in the Assam Hill Districts) Reg. III. of 1875, ss. 2, 3.

As to whipping for offences under s. 382 in the Punjab Frontier Districts and Baluchistan, *see* the Punjab Frontier Crimes Regulation (IV. of 1887), s. 8.

As to punishment for offences under ss. 379-382, inquired into by a Council of Elders in a Punjab Frontier District or in Baluchistan, *see* the Punjab Frontier Crimes Regulation (IV. of 1887), s. 14.

As to extortion by threat of accusation of an offence under s. 377, *see* ss. 388, 389, *infra*.

Explanation 1.—A thing, so long as it is attached to the earth, not being moveable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Explanation 2.—A moving effected by the same act which effects the severance may be a theft.

Explanation 3.—A person is said to cause a thing to move by removing an obstacle which prevented it from moving, or by separating it from any other thing, as well as by actually moving it.

Explanation 4.—A person, who, by any means, causes an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.

Explanation 5.—The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority, either express or implied.

Illustrations.

(a.) A cuts down a tree on Z's ground, with the intention of dishonestly taking the tree out of Z's possession, without Z's consent: Here, as soon as A has severed the tree in order to such taking, he has committed theft.

(b.) A puts a bait for dogs in his pocket, and thus induces Z's dog to follow it: Here, if A's intention be dishonestly to take the dog out of Z's possession without Z's consent, A has committed theft as soon as Z's dog has begun to follow A.

(c.) A meets a bullock carrying a box of treasure. He drives the bullock in a certain direction in order that he may dishonestly take the treasure: As soon as the bullock begins to move, A has committed theft of the treasure.

(d.) A, being Z's servant, and entrusted by Z with the care of Z's plate, dishonestly runs away with the plate without Z's consent: A has committed theft.

(e.) Z, going on a journey, entrusts his plate to A, the keeper of a warehouse, till Z shall return. A carries the plate to a goldsmith, and sells it: Here the plate was not in Z's possession. It could not therefore be taken out of Z's possession, and A has not committed theft, though he may have committed criminal breach of trust.

(f.) A finds a ring belonging to Z on a table in the house which Z occupies: Here the ring is in Z's possession, and, if A dishonestly removes it, A commits theft.

(g.) *A* finds a ring lying on the high road, not in the possession of any person: *A*, by taking it, commits no theft, though he may commit criminal misappropriation of property.

(h.) *A* sees a ring belonging to *Z* lying on a table in *Z*'s house. Not venturing to misappropriate the ring immediately for fear of search and detection, *A* hides the ring in a place where it is highly improbable that it will ever be found by *Z*, with the intention of taking the ring from the hiding place, and selling it when the loss is forgotten: Here *A*, at the time of first moving the ring, commits theft.

(i.) *A* delivers his watch to *Z*, a jeweller, to be regulated. *Z* carries it to his shop. *A*, not owing the jeweller any debt for which the jeweller might lawfully detain the watch as a security, enters the shop openly, takes his watch by force out of *Z*'s hand, and carries it away: Here *A*, though he may have committed criminal trespass and assault, has not committed theft, inasmuch as what he did was not done dishonestly.

(j.) If *A* owes money to *Z* for repairing the watch, and if *Z* retains the watch lawfully as a security for the debt, and *A* takes the watch out of *Z*'s possession with the intention of depriving *Z* of the property as a security for his debt, he commits theft, inasmuch as he takes it dishonestly.

(k.) Again, if *A*, having pawned his watch to *Z*, takes it out of *Z*'s possession without *Z*'s consent, not having paid what he borrowed on the watch, he commits theft, though the watch is his own property, inasmuch as he takes it dishonestly.

(l.) *A* takes an article belonging to *Z* out of *Z*'s possession, without *Z*'s consent with the intention of keeping it until he obtains money from *Z* as a reward for its restoration: Here *A* takes dishonestly. *A* has therefore committed theft.

(m.) *A*, being on friendly terms with *Z*, goes into *Z*'s library in *Z*'s absence, and takes away a book without *Z*'s express consent, for the purpose merely of reading it, and with the intention of returning it: Here it is probable that *A* may have conceived that he had *Z*'s implied consent to use *Z*'s book. If this was *A*'s impression, *A* has not committed theft.

(n.) *A* asks charity from *Z*'s wife. She gives *A* money, food, and clothes, which *A* knows to belong to *Z*, her husband: Here it is probable that *A* may conceive that *Z*'s wife is authorized to give away alms. If this was *A*'s impression, *A* has not committed theft.

(o.) *A* is the paramour of *Z*'s wife. She gives *A* valuable property which *A* knows to belong to her husband *Z*, and to be such property as she has not authority from *Z* to give: If *A* takes the property dishonestly, he commits theft.

(p.) *A*, in good faith, believing property belonging to *Z* to be *A*'s own property, takes that property out of *Z*'s possession: Here, as *A* does not take dishonestly, he does not commit theft.

379. Whoever commits theft shall be punished with imprison-

Punishment for theft.

ment of either description for a term which may extend to three years, or with fine, or with both.

380. Whoever commits theft in any building, tent, or vessel, Theft in dwelling-house, which building, tent, or vessel is used as &c. a human dwelling, or used for the custody of property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

381. Whoever, being a clerk or servant, or being employed Theft, by clerk or servant, in the capacity of a clerk or servant, of property in possession of master, commits theft in respect of any property in the possession of his master or employer, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

382. Whoever commits theft, having made preparation for Theft after preparation made for causing death, fear of death, or of hurt, or of restraint, in order to the committing of the theft. causing death, or hurt, or restraint, to any person, in order to the committing of such theft, or in order to the effecting of his escape after the committing of such theft, or in order to the retaining of property taken by such theft, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Illustrations.

(a.) *A* commits theft on property in *Z*'s possession; and, while committing this theft, he has a loaded pistol under his garment, having provided this pistol for the purpose of hurting *Z* in case *Z* should resist: *A* has committed the offence defined in this section.

(b.) *A* picks *Z*'s pocket, having posted several of his companions near him in order that they may restrain *Z* if *Z* should perceive what is passing, and should resist, or should attempt to apprehend, *A*: *A* has committed the offence defined in this section.

*Of Extortion.**

383. Whoever intentionally puts any person in fear of any Extortion. injury to that person or to any other, and thereby dishonestly induces the person

* As to the application of ss. 388 and 389 to offences under special or local laws, see s. 40, *supra*.

As to whipping for offences defined in ss. 388 and 389, see the Whipping Act (IV. of 1909) and (in the Assam Hill District) Reg. III. of 1875, ss. 2, 3.

so put in fear to deliver to any person any property or valuable security, or anything signed or sealed, which may be converted into a valuable security, commits "extortion."

Illustrations.

(a.) *A* threatens to publish a defamatory libel concerning *Z* unless *Z* gives him money. He thus induces *Z* to give him money : *A* has committed extortion.

(b.) *A* threatens *Z* that he will keep *Z*'s child in wrongful confinement unless *Z* will sign and deliver to *A* a promissory note binding *Z* to pay certain moneys to *A*. *Z* signs and delivers the note : *A* has committed extortion.

(c.) *A* threatens to send club-men to plough up *Z*'s field unless *Z* will sign and deliver to *B* a bond binding *Z* under a penalty to deliver certain produce to *B*, and thereby induces *Z* to sign and deliver the bond : *A* has committed extortion.

(d.) *A*, by putting *Z* in fear of grievous hurt, dishonestly induces *Z* to sign or affix his seal to a blank paper, and deliver it to *A*. *Z* signs and delivers the paper to *A* : Here, as the paper so signed may be converted into a valuable security, *A* has committed extortion.

384. Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

385. Whoever, in order to the committing of extortion, puts any person in fear, or attempts to put any person in fear, of any injury, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

386. Whoever commits extortion by putting any person in fear of death or of grievous hurt to that person or to any other shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

387. Whoever, in order to the committing of extortion, puts any person in fear of death or of grievous hurt to that person, or attempts to put any person in fear of death or of grievous hurt to that person, or to any other, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

388.* Whoever commits extortion by putting any person in fear of an accusation against that person or any other of having committed, or attempted to commit, any offence punishable with death, or with transportation for life, or with imprisonment for a term which may extend to ten years, or of having attempted to induce any other person to commit such offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if the offence be one punishable under section 377 of this Code, may be punished with transportation for life.

389.* Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of an accusation against that person or any other of having committed, or attempted to commit, an offence punishable with death, or with transportation for life, or with imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if the offence be punishable under section 377 of this Code, may be punished with transportation for life.

Of Robbery and Dacoity.†

390. In all robbery, there is either theft or extortion.

Robbery. Theft is "robbery" if, in order to the committing of the theft, or in committing the theft, or in carrying away, or attempting to carry away, pro-

When theft is robbery.

* In ss. 388 and 389, the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in ss. 41 and 42 of this Code.—*See* s. 40 of this Code, *supra*.

† All persons are bound to give information of offences punishable under ss. 392 to 399 or 402.—*See* the Code of Criminal Procedure (Act V. of 1898), s. 44. *See* also the same section of Act X. of 1882 as amended for Burma by the Upper Burma Village Regulation (XIV. of 1887), s. 4, and by the Lower Burma Village Act (III. of 1889), s. 5, as to dacoity and robbery.

As to whipping for offences under ss. 390, 391, 393, 394, *see* the Whipping Act (IV. of 1909); for offences under ss. 392-399 in the Punjab Frontier Districts and in Baluchistan, *see* the Punjab Frontier Crimes Regulation (IV. of 1887), s. 8.

As to punishment for offences under ss. 392-399 enquired in o by a Council of Elders in a Punjab Frontier District or in Baluchistan, *see* the Punjab Frontier Crimes Regulation (IV. of 1887), s. 14.

perty obtained by the theft, the offender, for that end, voluntarily causes, or attempts to cause, to any person, death or hurt, or wrongful restraint, or fear of instant death, or of instant hurt, or of instant wrongful restraint.

Extortion is "robbery" if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person, or to some other person; and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

Explanation.—The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint.

Illustrations.

(a.) A holds Z down, and fraudulently takes Z's money and jewels from Z's clothes without Z's consent: Here A has committed theft, and, in order to the committing of that theft, has voluntarily caused wrongful restraint to Z: A has therefore committed robbery.

(b.) A meets Z on the high road, shows a pistol, and demands Z's purse. Z, in consequence, surrenders his purse: Here A has extorted the purse from Z by putting him in fear of instant hurt, and being, at the time of committing the extortion, in his presence. A has, therefore, committed robbery.

(c.) A meets Z and Z's child on the high road. A takes the child, and threatens to fling it down a precipice unless Z delivers his purse. Z, in consequence, delivers his purse: Here A has extorted the purse from Z by causing Z to be in fear of instant hurt to the child who is there present: A has therefore committed robbery on Z.

(d.) A obtains property from Z by saying "Your child is in the hands of my gang, and will be put to death unless you send us ten thousand rupees." This is extortion, and punishable as such; but it is not robbery unless Z is put in fear of the instant death of his child.

391. When five or more persons conjointly commit, or attempt to commit a robbery, or, where the whole number of persons conjointly committing, or attempting to commit, a robbery, and persons present and aiding such commission or attempt amount to five or more, every person so committing, attempting, or aiding is said to commit "dacoity."

392. Whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and, if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years.

Punishment for robbery.

393. Whoever attempts to commit robbery shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Attempt to commit robbery.

394. If any person, in committing, or in attempting to commit, robbery, voluntarily causes hurt, such person and any other person jointly concerned in committing or attempting to commit such robbery shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Voluntarily causing hurt in committing robbery.

395. Whoever commits dacoity shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Punishment for dacoity.

396. If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death or transportation for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Dacoity with murder.

397. If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.

Robbery or dacoity, with attempt to cause death or grievous hurt.

398. If, at the time of attempting to commit robbery or dacoity, the offender is armed with any deadly weapon, the imprisonment with which such offender shall be punished shall not be less than seven years.

Attempt to commit robbery or dacoity when armed with deadly weapon.

399. Whoever makes any preparation for committing dacoity shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

400. Whoever, at any time after the passing of this Act, shall belong to a gang of persons associated for the purpose of habitually committing dacoity, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

401. Whoever, at any time after the passing of this Act, shall belong to any wandering or other gang of persons associated for the purpose of habitually committing theft or robbery, and not being a gang of thugs or dacoits, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

402. Whoever, at any time after the passing of this Act, shall be one of five or more persons assembled for the purpose of committing dacoity shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Of Criminal Misappropriation of Property.

403.* Whoever dishonestly misappropriates or converts to his own use any moveable property shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustrations.

(a.) A takes property belonging to Z out of Z's possession, in good faith believing, at the time when he takes it, that the property belongs to himself: A is not guilty of theft; but, if A, after discovering his mistake, dishonestly appropriates the property to his own use, he is guilty of an offence under this section.

(b.) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent: Here, if A was under the impression that he had Z's implied consent to take the

* As to framing a charge under s. 403, see s. 222 of new Code of Criminal Procedure (Act V. of 1898).

book for the purpose of reading it, *A* has not committed theft. But, if *A* afterwards sells the book for his own benefit, he is guilty of an offence under this section.

(*c.*) *A* and *B* being joint-owners of a horse, *A* takes the horse out of *B*'s possession, intending to use it: Here, as *A* has a right to use the horse, he does not dishonestly misappropriate it. But, if *A* sells the horse, and appropriates the whole proceeds to his own use, he is guilty of an offence under this section.

Explanation 1.—A dishonest misappropriation for a time only is a misappropriation within the meaning of this section.

Illustration.

A finds a Government promissory note belonging to *Z*, bearing a blank endorsement. *A*, knowing that the note belongs to *Z*, pledges it with a banker as a security for a loan, intending at a future time to restore it to *Z*: *A* has committed an offence under this section.

Explanation 2.—A person who finds property not in the possession of any other person, and takes such property for the purpose of protecting it for, or of restoring it to, the owner, does not take or misappropriate it dishonestly, and is not guilty of an offence; but he is guilty of the offence above defined if he appropriates it to his own use when he knows, or has the means of discovering, the owner, or before he has used reasonable means to discover and give notice to the owner, and has kept the property a reasonable time to enable the owner to claim it.

What are reasonable means, or what is a reasonable time, in such a case, is a question of fact.

It is not necessary that the finder should know who is the owner of the property, or that any particular person is the owner of it: it is sufficient if, at the time of appropriating it, he does not believe it to be his own property, or in good faith believe that the real owner cannot be found.

Illustrations.

(*a.*) *A* finds a rupee on the high road, not knowing to whom the rupee belongs. *A* picks up the rupee: Here *A* has not committed the offence defined in this section.

(*b.*) *A* finds a letter on the road, containing a bank-note. From the direction and contents of the letter, he learns to whom the note belongs. He appropriates the note: He is guilty of an offence under this section.

(*c.*) *A* finds a cheque payable to bearer. He can form no conjecture as to the person who has lost the cheque. But the name of the person

who has drawn the cheque appears. *A* knows that this person can direct him to the person in whose favour the cheque was drawn. *A* appropriates the cheque without attempting to discover the owner : He is guilty of an offence under this section.

(*d.*) *A* sees *Z* drop his purse with money in it. *A* picks up the purse with the intention of restoring it to *Z*, but afterwards appropriates it to his own use : *A* has committed an offence under this section.

(*e.*) *A* finds a purse with money, not knowing to whom it belongs ; he afterwards discovers that it belongs to *Z*, and appropriates it to his own use : *A* is guilty of an offence under this section.

(*f.*) *A* finds a valuable ring, not knowing to whom it belongs. *A* sells it immediately without attempting to discover the owner : *A* is guilty of an offence under this section.

404. Whoever dishonestly misappropriates or converts to

Dishonest misappropriation of property possessed by deceased person at the time of his death. his own use property knowing that such property was in the possession of a deceased person at the time of that person's decease, and has not since been

in the possession of any person legally entitled to such possession, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine ; and, if the offender, at the time of such person's decease, was employed by him as a clerk or servant, the imprisonment may extend to seven years.

Illustration.

Z dies in possession of furniture and money. His servant *A*, before the money comes into the possession of any person entitled to such possession, dishonestly misappropriates it : *A* has committed the offence defined in this section.

Of Criminal Breach of Trust.

405.* Whoever, being in any manner entrusted with pro-

Criminal breach of trust. perty, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust."

* As to framing a charge under s. 405, see s. 222 of the Code of Criminal Procedure (Act V. of 1898).

Illustrations.

(a.) *A*, being executor to the will of a deceased person, dishonestly disobeys the law which directs him to divide the effects according to the will, and appropriates them to his own use: *A* has committed criminal breach of trust.

(b.) *A* is a warehouse-keeper. *Z*, going on a journey, entrusts his furniture to *A* under a contract that it shall be returned on payment of a stipulated sum for warehouse-room. *A* dishonestly sells the goods: *A* has committed criminal breach of trust.

(c.) *A*, residing in Calcutta, is agent for *Z*, residing at Delhi. There is an express or implied contract between *A* and *Z* that all sums remitted by *Z* to *A* shall be invested by *A* according to *Z*'s direction. *Z* remits a lakh of rupees to *A* with directions to *A* to invest the same in Company's Paper. *A* dishonestly disobeys the directions, and employs the money in his own business: *A* has committed criminal breach of trust.

(d.) But, if *A*, in the last *illustration*, not dishonestly, but in good faith, believing that it will be more for *Z*'s advantage to hold shares in the Bank of Bengal, disobeys *Z*'s directions, and buys shares in the Bank of Bengal for *Z* instead of buying Company's Paper, here, though *Z* should suffer loss, and should be entitled to bring a civil action against *A* on account of that loss, yet *A*, not having acted dishonestly, has not committed criminal breach of trust.

(e.) *A*, a revenue-officer, is entrusted with public money, and is either directed by law or bound by a contract, express or implied, with the Government, to pay into a certain treasury all the public money which he holds. *A* dishonestly appropriates the money: *A* has committed criminal breach of trust.

(f.) *A*, a carrier, is entrusted by *Z* with property to be carried by land or by water. *A* dishonestly misappropriates the property: *A* has committed criminal breach of trust.

406. Whoever commits criminal breach of trust shall be

Punishment for criminal breach of trust. punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both. '

407. Whoever, being entrusted with property as a carrier,

Criminal breach of trust by wharfinger, or warehouse keeper, carrier, &c. commits criminal breach of trust in respect of such property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

403. Whoever, being a clerk or servant, or employed as a

Criminal breach of trust by clerk or servant, and being in any manner entrusted in such capacity with property, or with any dominion over property, commits criminal

breach of trust in respect of that property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

409. Whoever, being in any manner entrusted with property, Criminal breach of trust by or with any dominion over property, in public servant, or by banker, his capacity of a public servant, or in merchant, or agent. the way of his business as a banker, merchant, factor, broker, attorney, or agent, commits criminal breach of trust in respect of that property, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

*Of the Receiving of Stolen Property.**

410. Property, the possession whereof has been transferred by theft, or by extortion, or by robbery, Stolen property. and property which has been criminally misappropriated, or in respect of which† criminal breach of trust has been committed, is designated as *stolen property* "whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without British India."‡ But, if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property.

411. Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, Dishonestly receiving stolen property. shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

* As to whipping for the offences defined in ss. 411-413, see now the Whipping Act (IV. of 1909).

As to punishment for offences under ss. 411-414, enquired into by a Council of Elders in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1837), s. 14.

† In s. 410, the words, "the offence of," have here been omitted—the word "the" being repealed by the Repealing and Amending Act (XII. of 1891), and the words, "offence of," by the Indian Penal Code Amendment Act (VIII. of 1882), s. 9.

‡ In s. 410, the words quoted have been inserted by the Indian Penal Code Amendment Act (VIII. of 1832), s. 9.

412. Whoever dishonestly receives or retains any stolen property, the possession whereof he knows or has reason to believe to have been transferred by the commission of dacoity, or dishonestly receives from a person whom he knows or has reason to believe to belong, or to have belonged, to a gang of dacoits, property which he knows or has reason to believe to have been stolen, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

413. Whoever habitually receives or deals in property which he knows or has reason to believe to be stolen property, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

414. Whoever voluntarily assists in concealing or disposing of, or making away with, property which he knows or has reason to believe to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Of Cheating.

415. Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes, or is likely to cause, damage or harm to that person in body, mind, reputation, or property, is said to "cheat."

Explanation — A dishonest concealment of facts is a deception within the meaning of this section.

Illustrations.

(a.) A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay : A cheats.

(b.) A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article : A cheats.

(c.) *A*, by exhibiting to *Z* a false sample of an article, intentionally deceives *Z* into believing that the article corresponds with the sample, and thereby dishonestly induces *Z* to buy and pay for the article : *A* cheats.

(d.) *A*, by tendering in payment for an article a bill on a house with which *A* keeps no money, and by which *A* expects that the bill will be dishonoured, intentionally deceives *Z* and thereby dishonestly induces *Z* to deliver the article, intending not to pay for it : *A* cheats.

(e.) *A*, by pledging as diamonds articles which he knows are not diamonds, intentionally deceives *Z*, and thereby dishonestly induces *Z* to lend money : *A* cheats.

(f.) *A* intentionally deceives *Z* into a belief that *A* means to repay any money that *Z* may lend to him, and thereby dishonestly induces *Z* to lend him money, *A* not intending to repay it : *A* cheats.

(g.) *A* intentionally deceives *Z* into a belief that *A* means to deliver, to *Z* a certain quantity of indigo-plant which he does not intend to deliver and thereby, dishonestly induces *Z* to advance money upon the faith of such delivery : *A* cheats ; but, if *A*, at the time of obtaining the money, intends to deliver the indigo-plant, and afterwards breaks his contract, and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.

(h.) *A* intentionally deceives *Z* into a belief that *A* has performed *A*'s part of a contract made with *Z*, which he has not performed, and thereby dishonestly induces *Z* to pay money : *A* cheats.

(i.) *A* sells and conveys an estate to *B*. *A*, knowing that, in consequence of such sale, he has no right to the property, sells or mortgages the same to *Z*, without disclosing the fact of the previous sale and conveyance to *B*, and receives the purchase or mortgage-money from *Z* : *A* cheats.

416. A person is said to "cheat by personation" if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is.

Explanation.—The offence is committed whether the individual personated is a real or imaginary person.

Illustrations.

(a.) *A* cheats by pretending to be a certain rich banker of the same name : *A* cheats by personation.

(b.) *A* cheats by pretending to be *B*, a person who is deceased : *A* cheats by personation.

417. Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Punishment for cheating.

418. Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates he was bound, either by law or by a legal contract, to protect, shall be punished with imprisonment of either description for a term which may extend to three years or with fine, or with both.

419. Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

420. Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter, or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Of Fraudulent Deeds and Dispositions of Property.

421. Whoever dishonestly or fraudulently removes, conceals, or delivers to any person, or transfers, or causes to be transferred, to any person, without adequate consideration, any property, intending thereby to prevent, or knowing it to be likely that he will thereby prevent, the distribution of that property according to law among his creditors or the creditors of any other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

422. Whoever dishonestly or fraudulently prevents any debt or demand due to himself or to any other person from being made available according to law for payment of his debts or the debts of such other person shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

423. Whoever dishonestly or fraudulently signs, executes, or becomes a party to, any deed or instrument which purports to transfer or subject to any charge any property or any interest therein, and which contains any false statement relating to the consideration for such transfer or charge, or relating to the person or persons for whose use or benefit it is really intended to operate, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

424. Whoever dishonestly or fraudulently conceals or removes any property of himself or any other person, or dishonestly or fraudulently assists in the concealment or removal thereof, or dishonestly releases any demand or claim to which he is entitled, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

*Of Mischief.**

425. Whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public, or to any person, causes the destruction of any property, or any such change in any property, or in the situation thereof, as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief."

Explanation 1.—It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss

* All persons are bound to give information of offences punishable under s. 435 or 436.—*See* the Code of Criminal Procedure (Act V. of 1898), s. 44.

Offences punishable under ss. 426 and 427 are, in certain cases, compoundable.—*See ibid.*, s. 345. As to stage of proceedings at which no composition is allowable without the leave of the Court, *see ibid.* sub-s (5).

As to whipping in the Punjab Frontier districts and Baluchistan for offences punishable under ss. 427 to 429, 435, and 436, *see* the Punjab Frontier Crimes Regulation (IV. of 1887), s. 8.

As to punishment for offences under ss. 427, 429, 435, and 436, enquired into by a Council of Elders in a Punjab Frontier District or in Baluchistan, *see* the Punjab Frontier Crimes Regulation (IV. of 1887), s. 14.

or damage to any person by injuring any property, whether it belongs to that person or not.

Explanation 2.—Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.

Illustrations.

(a.) *A* voluntarily burns a valuable security belonging to *Z*, intending to cause wrongful loss to *Z*: *A* has committed mischief.

(b.) *A* introduces water into an ice-house belonging to *Z*, and thus causes the ice to melt, intending wrongful loss to *Z*: *A* has committed mischief.

(c.) *A* voluntarily throws into a river a ring belonging to *Z*, with the intention of thereby causing wrongful loss to *Z*: *A* has committed mischief.

(d.) *A*, knowing that his effects are about to be taken in execution in order to satisfy a debt due from him to *Z*, destroys those effects with the intention of thereby preventing *Z* from obtaining satisfaction of the debt, and of thus causing damage to *Z*: *A* has committed mischief.

(e.) *A*, having insured a ship, voluntarily causes the same to be cast away, with the intention of causing damage to the under-writers: *A* has committed mischief.

(f.) *A* causes a ship to be cast away intending thereby to cause damage to *Z*, who has lent money on bottomry on the ship: *A* has committed mischief.

(g.) *A*, having joint property with *Z* in a horse, shoots the horse, intending thereby to cause wrongful loss to *Z*: *A* has committed mischief.

(h.) *A* causes cattle to enter upon a field belonging to *Z*, intending to cause, and knowing that he is likely to cause, damage to *Z*'s crop: *A* has committed mischief.

426. Whoever commits mischief shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

427. Whoever commits mischief, and thereby causes loss or damage to the amount of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

428. Whoever commits mischief by killing, poisoning, maiming, or rendering useless any animal or animals of the value of ten rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

ment of either description for a term which may extend to two years, or with fine, or with both.

429. Whoever commits mischief by killing, poisoning, maiming, or rendering useless any elephant, camel, horse, mule, buffalo, bull, cow, or ox, whatever may be the value thereof, or any other animal of the value of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

430. Whoever commits mischief by doing any act which causes, or which he knows to be likely to cause, a diminution of the supply of water for agricultural purposes, or for food or drink for human beings, or for animals which are property, or for cleanliness, or for carrying on any manufacture, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

431. Whoever commits mischief by doing any act which renders, or which he knows to be likely to render, any public road, bridge, natural or artificial, impassable or less safe for travelling or conveying property, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

432. Whoever commits mischief by doing any act which causes, or which he knows to be likely to cause, an inundation or an obstruction to any public drainage attended with injury or damage, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

433. Whoever commits mischief by destroying or moving any light-house or other light used as a sea-mark, or any sea-mark or buoy or other thing placed as a guide for navigators, or by any act which renders any such light-house, sea-mark, buoy, or other such thing as aforesaid less useful as a guide for navigators, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

434. Whoever commits mischief by destroying or moving any land-mark fixed by the authority of a public servant, or by any act which renders such land-mark less useful as such, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

435. Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, damage to any property to the amount of one hundred rupees or upwards, "or (where the property is agricultural produce) ten rupees or upwards,"* shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

436. Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a place of worship, or as a human dwelling, or as a place for the custody of property, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

437. Whoever commits mischief to any decked vessel, or any vessel of a burden of twenty tons or upwards, intending to destroy or render unsafe, or knowing it to be likely that he will thereby destroy or render unsafe, that vessel, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

438. Whoever commits, or attempts to commit, by fire or any explosive substance, such mischief as is described in the last-preceding section, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

* In s. 435, the words quoted have been inserted by the Indian Penal Code Amendment Act (VIII. of 1882), s. 10.

439. Whoever intentionally runs any vessel aground or ashore, intending to commit theft of any property contained therein, or to dishonestly misappropriate any such property, or with intent that such theft or misappropriation of property may be committed, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

440. Whoever commits mischief, having made preparation for causing to any person death or hurt, death or hurt, or of wrongful restraint, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

*Of Criminal Trespass.**

441 † Whoever enters into or upon property in the possession of another with intent to commit an offence, or to intimidate, insult, or annoy any person in possession of such property,

* As to the application of ss. 441 and 445 to offences under special or local laws, *see* s. 40. *supra*.

All persons are bound to give information of offences punishable under ss. 449-450, and 456 to 460.—*See* the Code of Criminal Procedure (Act V. of 1898), s. 44.

Village-headmen, &c., to give information of offences under ss. 449, 460, and 457 to 460.—*See* the Code of Criminal Procedure (Act V. of 1898), s. 45.

Offences punishable under ss. 447 and 448 are compoundable.—*See* *ibid*, s. 345. As to stage of proceedings at which no composition is allowable without the leave of the Court, *see* *ibid*, sub-s (5).

As to whipping for offences defined in ss. 443-446, *see* the Whipping Act (IV. of 1909).

As to whipping for offences punishable under ss. 448-460 in the Punjab Frontier Districts and Baluchistan, *see* the Punjab Frontier Crimes Regulation (IV. of 1887), s. 8.

As to punishment for offences under ss. 448-460 enquired into by a Council of Elders in a Punjab Frontier District or in Baluchistan, *see* the Punjab Frontier Crimes Regulation (IV. of 1887), s. 14.

† In s. 441, the word "offence" has the same meaning when the thing punishable under the special or local law as defined in ss. 41 and 42 is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.—*See* s. 40, *supra*.

or, having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult, or annoy any such person, or with intent to commit an offence,

is said to commit "criminal trespass."

442. Whoever commits criminal trespass by entering into, or remaining in, any building, tent, or vessel used as a human dwelling, or any building used as a place for worship, or as a place for the custody of property, is said to commit "house-trespass."

Explanation.—The introduction of any part of the criminal trespasser's body is entering sufficient to constitute house-trespass.

443. Whoever commits house-trespass, having taken precautions to conceal such house-trespass from some person who has a right to exclude or eject the trespasser from the building, tent, or vessel which is the subject of the trespass, is said to commit "lurking house-trespass."

444. Whoever commits lurking house-trespass after sunset, and before sunrise, is said to commit "lurking house-trespass by night."

445* A person is said to commit "house-breaking," who commits house-trespass, if he effects his entrance into the house or any part of it in any of the six ways hereinafter described; or if, being in the house or any part of it for the purpose of committing an offence, or, having committed an offence therein, he quits the house or any part of it in any of such six ways, that is to say:—

First.—If he enters or quits through a passage made by himself, or by any abettor of the house-trespass, in order to the committing of the house-trespass.

Secondly.—If he enters or quits through any passage not intended by any person other than himself or an abettor of the offence for human entrance, or through any passage to which he has obtained access by scaling or climbing over any wall or building.

Thirdly.—If he enters or quits through any passage which he or any abettor of the house-trespass has opened, in order to the

* In s. 445, the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in ss. 41 and 42 of this Code.—See s. 40 of this Code, *supra*.

committing of the house-trespass, by any means by which that passage was not intended by the occupier of the house to be opened.

Fourthly.—If he enters or quits by opening any lock in order to the committing of the house-trespass, or in order to the quitting of the house after a house-trespass.

Fifthly.—If he effects his entrance or departure by using criminal force or committing an assault, or by threatening any person with assault.

Sixthly.—If he enters or quits by any passage which he knows to have been fastened against such entrance or departure, and to have been unfastened by himself, or by an abettor of the house-trespass.

Explanation.—Any out-house or building occupied with a house, and between which and such house there is an immediate internal communication, is part of the house within the meaning of this section.

Illustrations.

(a.) A commits house-trespass by making a hole through the wall of Z's house. and putting his hand through the aperture. This is house-breaking.

(b.) A commits house-trespass by creeping into a ship at a port-hole between decks : This is house-breaking.

(c.) A commits house-trespass by entering Z's house through a window : This is house-breaking.

(d.) A commits house-trespass by entering Z's house through the door, having opened a door which was fastened : This is house-breaking.

(e.) A commits house-trespass by entering Z's house through the door, having lifted a latch by putting a wire through a hole in the door : This is house-breaking.

(f.) A finds the key of Z's house-door which Z had lost, and commits house-trespass by entering Z's house, having opened the door with that key : This is house-breaking.

(g.) Z is standing in his door-way, A forces a passage by knocking Z down, and commits house-trespass by entering the house : This is house-breaking.

(h.) Z, the door-keeper of Y, is standing in Y's door-way. A commits house-trespass by entering the house, having deterred Z from opposing him by threatening to beat him : This is house-breaking.

446. Whoever commits house-breaking after sunset, and before sunrise, is said to commit "house-breaking by night."

447. Whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

448. Whoever commits house-trespass shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

449. Whoever commits house-trespass in order to the committing of any offence punishable with death shall be punished with transportation for life, or with rigorous imprisonment for a term not exceeding ten years, and shall also be liable to fine.

450. Whoever commits house-trespass in order to the committing of any offence punishable with transportation for life shall be punished with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

451. Whoever commits house-trespass in order to the committing of any offence punishable with imprisonment shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine; and, if the offence intended to be committed is theft, the term of the imprisonment may be extended to seven years.

452. Whoever commits house-trespass, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

453. Whoever commits lurking house-trespass or house-breaking shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

454. Whoever commits lurking house-trespass or house-breaking in order to the committing of any offence punishable with imprisonment shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and, if the offence intended to be committed is theft, the term of the imprisonment may be extended to ten years.

Lurking house-trespass or house-breaking in order to commit offence punishable with imprisonment.

455. Whoever commits lurking house-trespass or house-breaking, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Lurking house-trespass or house-breaking after preparation for hurt, assault, or wrongful restraint.

456. Whoever commits lurking house-trespass by night or house-breaking by night shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Punishment for lurking house-trespass or house-breaking by night.

457. Whoever commits lurking house-trespass by night or house-breaking by night in order to the committing of any offence punishable with imprisonment shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; and, if the offence intended to be committed is theft, the term of the imprisonment may be extended to fourteen years.

Lurking house-trespass or house-breaking by night in order to commit offence punishable with imprisonment.

458. Whoever commits lurking house-trespass by night or house-breaking by night, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

Lurking house-trespass or house-breaking by night after preparation for hurt, assault, or wrongful restraint.

459. Whoever, whilst committing lurking house-trespass or house-breaking, causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

460. If, at the time of the committing of lurking house-trespass by night or house-breaking by night, any person guilty of such offence shall voluntarily cause or attempt to cause death or grievous hurt to any person, every person jointly concerned in committing such lurking house-trespass by night or house-breaking by night shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

461. Whoever dishonestly, or with intent to commit mischief, breaks open or unfastens any closed receptacle which contains, or which he believes to contain, property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

462 Whoever, being entrusted with any closed receptacle which contains, or which he believes to contain, property, without having authority to open the same, dishonestly, or with intent to commit mischief, breaks open or unfastens that receptacle, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

CHAPTER XVIII.

OF OFFENCES RELATING TO DOCUMENTS,* AND TO TRADE
OR PROPERTY-MARKS.

463. Whoever makes any false document or part of a document with intent to cause damage or injury to the public, or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud, or that fraud may be committed, commits forgery.

Forgery.

464. A person is said to make a false document—
Making a false document.

first—who dishonestly or fraudulently makes, signs, seals, or executes a document or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document or part of a document was made, signed, sealed, or executed by, or by the authority of, a person by whom or by whose authority he knows that it was not made, signed, sealed, or executed, or at a time at which he knows that it was not made, signed, sealed, or executed; or,

secondly—who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part thereof after it has been made or executed, either by himself, or by any other person, whether such person be living or dead at the time of such alteration; or,

thirdly—who dishonestly or fraudulently causes any person to sign, seal, execute, or alter a document, knowing that such person, by reason of unsoundness of mind or intoxication, cannot, or that, by reason of deception practised upon him, he does not, know the contents of the document or the nature of the alteration.

* As to authority for institution of prosecutions under s. 463, 471, 475, or 476, see the Code of Criminal Procedure (Act V. of 1898), s. 195, sub-s. (1), cl. (c).

As to procedure in case of offences described in s. 463, 471, 474, 475, 476, or 477, see now the new Code of Civil Procedure (Act V. of 1908).

As to whipping for the offences defined in ss. 463, 466-469, see now the Whipping Act (IV. of 1909).

Illustrations.

(a.) *A* has a letter of credit upon *B* for Rs. 10,000 written by *Z*. *A*, in order to defraud *B*, adds a cipher to the 10,000, and makes the sum 1,00,000, intending that it may be believed by *B* that *Z* so wrote the letter: *A* has committed forgery.

(b.) *A*, without *Z*'s authority, affixes *Z*'s seal to a document purporting to be a conveyance of an estate from *Z* to *A*, with the intention of selling the estate to *B*, and thereby obtaining from *B* the purchase-money: *A* has committed forgery.

(c.) *A* picks up a cheque on a banker signed by *B*, payable to bearer, but without any sum having been inserted in the cheque. *A* fraudulently fills up the cheque by inserting the sum of ten thousand rupees: *A* commits forgery.

(d.) *A* leaves with *B*, his agent, a cheque on a banker signed by *A*, without inserting the sum payable, and authorizes *B* to fill up the cheque by inserting a sum not exceeding ten thousand rupees for the purpose of making certain payments. *B* fraudulently fills up the cheque by inserting the sum of twenty thousand rupees: *B* commits forgery.

(e.) *A* draws a bill of exchange on himself in the name of *B* without *B*'s authority, intending to discount it as a genuine bill with a banker, and intending to take up the bill on its maturity: Here, as *A* draws the bill with intent to deceive the banker by leading him to suppose that he had the security of *B*, and thereby to discount the bill, *A* is guilty of forgery.

(f.) *Z*'s will contains these words: "I direct that all my remaining property be equally divided between *A*, *B*, and *C*." *A* dishonestly scratches out *B*'s name intending that it may be believed that the whole was left to himself and *C*: *A* has committed forgery.

(g.) *A* endorses a Government promissory note, and makes it payable to *Z* or his order, by writing on the bill the words, "Pay to *Z* or his order," and signing the endorsement. *B* dishonestly erases the words "Pay to *Z* or his order," and thereby converts the special endorsement into a blank endorsement: *B* commits forgery.

(h.) *A* sells and conveys an estate to *Z*. *A*, afterwards, in order to defraud *Z* of his estate, executes a conveyance of the same estate to *B* dated six months earlier than the date of the conveyance to *Z*, intending it to be believed that he had conveyed the estate to *B* before he conveyed it to *Z*: *A* has committed forgery.

(i.) *Z* dictates his will to *A*. *A* intentionally writes down a different legatee from the legatee named by *Z*, and, by representing to *Z* that he has prepared the will according to his instructions, induces *Z* to sign the will: *A* has committed forgery.

(j.) *A* writes a letter, and signs it with *B*'s name without *B*'s authority certifying that *A* is a man of good character and in distressed circumstances from unforeseen misfortune, intending, by means of such letter, to obtain alms from *Z* and other persons: Here, as *A* made a false document in order to induce *Z* to part with property, *A* has committed forgery.

(k.) *A*, without *B*'s authority, writes a letter, and signs it in *B*'s name certifying to *A*'s character, intending thereby to obtain employment under *Z*: *A* has committed forgery, inasmuch as he intended to deceive *Z* by the forged certificate, and thereby to induce *Z* to enter into an express or implied contract for service.

Explanation 1.—A man's signature of his own name may amount to forgery.

Illustrations.

(a.) *A* signs his own name to a bill of exchange, intending that it may be believed that the bill was drawn by another person of the same name: *A* has committed forgery.

(b.) *A* writes the word "accepted" on a piece of paper, and signs it with *Z*'s name, in order that *B* may afterwards write on the paper a bill of exchange drawn by *B* upon *Z*, and negotiate the bill as though it had been accepted by *Z*: *A* is guilty of forgery, and if *B*, knowing the fact, draws the bill upon the paper pursuant to *A*'s intention, *B* is also guilty of forgery.

(c.) *A* picks up a bill of exchange payable to the order of a different person of the same name. *A* endorses the bill in his own name, intending to cause it to be believed that it was endorsed by the person to whose order it was payable: Here *A* has committed forgery.

(d.) *A* purchases an estate sold under execution of a decree against *B*. *B*, after the seizure of the estate, in collusion with *Z*, executes a lease of the estate to *Z* at a nominal rent, and for a long period, and dates the lease six months prior to the seizure with intent to defraud *A*, and to cause it to be believed that the lease was granted before the seizure: *B*, though he executes the lease in his own name, commits forgery by antedating it.

(e.) *A*, a trader, in anticipation of insolvency, lodges effects with *B* for *A*'s benefit, and with intent to defraud his creditors, and, in order to give a colour to the transaction, writes a promissory note binding himself to pay to *B* a sum for value received and antedates the note, intending that it may be believed to have been made before *A* was on the point of insolvency: *A* has committed forgery under the first head of the definition.

Explanation 2.—The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

Illustration.

A draws a bill of exchange upon a fictitious person, and fraudulently accepts the bill in the name of such fictitious person with intent to negotiate it: *A* commits forgery.

465. Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Punishment for forgery.

466. Whoever forges a document purporting to be a Forgery of record of Court record or proceeding of or in a Court of Justice, or a register of birth, baptism, marriage, or burial, or a register kept by a public servant as such, or a certificate or document purporting to be made by a public servant in his official capacity, or an authority to institute or defend a suit, or to take any proceedings therein, or to confess judgment, or a power-of-attorney, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

467. Whoever forges a document which purports to be a Forgery of valuable security, will, &c. valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest, or dividends thereon, or to receive or deliver any money, moveable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any moveable property or valuable security, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

468. Whoever commits forgery, intending that the document Forgery for purpose of forged shall be used for the purpose of cheating. cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

469. Whoever commits forgery, intending that the document Forgery for purpose of forged shall harm the reputation of any party, or knowing that it is likely to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

470. A false document made wholly or in part by forgery is designated "a forged document."

Forged document.

471. Whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document shall be punished in the same manner as if he had forged such document.

472. Whoever makes or counterfeits any seal, plate, or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under section 467 of this Code, or, with such intent, has in his possession any such seal, plate, or other instrument, knowing the same to be counterfeit, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

473. Whoever makes or counterfeits any seal, plate, or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under any section of this chapter other than section 467, or, with such intent, has in his possession any such seal, plate, or other instrument, knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

474. Whoever has in his possession any document knowing the same to be forged, and intending that the same shall fraudulently or dishonestly be used as genuine shall, if the document is one of the description mentioned in section 466 of this Code, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ; and, if the document is one of the description mentioned in section 467, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

475. Whoever counterfeits upon or in the substance of any material any device or mark used for the purpose of authenticating any document described in section 467 of this Code, intending that such device or mark shall be used for the purpose of

giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who, with such intent, has in his possession any material upon, or in the substance of, which any such device or mark has been counterfeited, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

476. Whoever counterfeits upon or in the substance of any

Counterfeiting a device or mark used for authenticating documents other than those described in section 467, or possessing counterfeit-marked material.	material any device or mark used for the purpose of authenticating any document other than the documents described in section 467 of this Code, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who, with such intent, has in his possession any material upon, or in the substance of, which any such device or mark has been counterfeited, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.
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477. Whoever fraudulently or dishonestly, or with intent to

Fraudulent cancellation, destruction, &c., of will, authority to adopt, or valuable security.	cause damage or injury to the public or to any person, cancels, destroys, or defaces, or attempts to cancel, destroy, or deface, or secretes, or attempts to secrete, any document which is, or purports to be, a will, or an authority to adopt a son, or any valuable security, or commits mischief in respect to such document, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.
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477A.* Whoever, being a clerk, officer, or servant, or em-

Falsification of accounts.	ployed or acting in the capacity of a clerk, officer, or servant, wilfully, and with intent to defraud, destroys, alters, mutilates, or falsifies any book, paper, writing, valuable security, or account which belongs to, or is in the possession of, his employer, or has been received by him for or on behalf of his employer, or wilfully, and with intent to defraud, makes or abets the making of any false entry in, or omits or alters, or abets the commission or alteration of, any material parti-
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* S. 477A has been added by the Indian Criminal Law Amendment Act (III. of 1895), s. 4.

cular from or in any such book, paper, writing, valuable security, or account, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Explanation.—It shall be sufficient in any charge under this section to allege a general intent to defraud without naming any particular person intended to be defrauded, or specifying any particular sum of money intended to be the subject of the fraud, or any particular day on which the offence was committed.

*Of Trade, Property, and Other Marks.**

478. A mark used for denoting that goods are the manufacture or merchandise of a particular person is called a trade-mark, and, for the purposes of this Code, the expression “trade-mark” includes any trade-mark which is registered in the register of trade-marks kept under the Patents, Designs, and Trade-marks Act, 1883,† and any trade-mark which, either with or without registration, is protected by law in any British possession or Foreign State to which the provisions of the one-hundred-and-third section of the Patents, Designs, and Trade-marks Act, 1883,† are, under Order in Council, for the time being applicable.

479. A mark used for denoting that moveable property belongs to a particular person is called a property-mark.

480. Whoever marks any goods or any case, package, or other receptacle containing goods, or uses any case, package, or other receptacle with any mark thereon, in a manner reasonably calculated to cause it to be believed that the goods so marked, or any goods contained in any such receptacle so marked, are the manufacture or merchandise of a person whose manufacture or merchandise they are not, is said to use a false trade-mark.

* This part of Ch. XVIII. (i.e., ss. 478-489) has been substituted for the original by the Indian Merchandise Marks Act (IV. of 1889), s. 3.

As to costs of defence or prosecution, and limitation of prosecutions, under ss. 478-489, see Act IV. of 1889, ss. 14, 15.

As to unintentional contravention of ss. 480-482 or 485, see Act IV. of 1889, s. 8.

As to forfeiture of goods on contravention of ss. 482 or 486-488, see Act IV. of 1889, s. 9.

† Stat. 46 & 47 Vict., c. 57.

481. Whoever marks any moveable property or goods, or any case, package, or other receptacle containing moveable property or goods, or uses any case, package, or other receptacle having any mark thereon, in a manner reasonably calculated to cause it to be believed that the property or goods so marked, or any property or goods contained in any such receptacle so marked, belong to a person to whom they do not belong, is said to use a false property-mark.

482. Whoever uses any false trade-mark or any false property-mark shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

483. Whoever counterfeits any trade-mark or property-mark used by any other person shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

484. Whoever counterfeits any property-mark used by a public servant, or any mark used by a public servant to denote that any property has been manufactured by a particular person, or at a particular time or place, or that the property is of a particular quality, or has passed through a particular office, or that it is entitled to any exemption, or uses as genuine any such mark, knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

485. Whoever makes or has in his possession any die, plate, or other instrument for the purpose of counterfeiting a trade-mark or property-mark, or has in his possession a trade-mark or property-mark for the purpose of denoting that any goods are the manufacture or merchandise of a person whose manufacture or merchandise they are not, or that they belong to a person to whom they do not belong, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

486. Whoever sells, or exposes, or has in possession for sale
 Selling goods marked with or any purpose of trade or manufacture,
 a counterfeit trade-mark or any goods or things with a counterfeit
 property-mark. trade-mark or property-mark affixed to,
 or impressed upon, the same, or to or upon any case, package, or
 other receptacle in which such goods are contained, shall, unless
 he proves—

(a) that, having taken all reasonable precautions against committing an offence against this section, he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the mark, and,

(b) that, on demand made by, or on behalf of, the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things, or

(c) that otherwise he had acted innocently,

be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

487. Whoever makes any false mark upon any case, package,
 Making a false mark upon or other receptacle containing goods, in
 any receptacle containing a manner reasonably calculated to cause
 goods. any public servant or any other person
 to believe that such receptacle contains goods which it does not contain, or that it does not contain goods which it does contain, or that the goods contained in such receptacle are of a nature or quality different from the real nature or quality thereof, shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

488. Whoever makes use of any such false mark in any man-
 Punishment for making ner prohibited by the last-foregoing sec-
 use of any such false mark. tion shall, unless he proves that he acted without intent to defraud, be punished as if he had committed an offence against that section.

489. Whoever removes, destroys, defaces, or adds to any
 Tampering with property- property-mark, intending or knowing it
 mark with intent to cause to be likely that he may thereby cause
 injury. injury to any person shall be punished
 with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

*Of Currency-notes and Bank-notes.**

489A. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any currency-note or bank-note, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—For the purposes of this section and of sections 489B, 489C, and 489D, the expression “bank-note” means a promissory note or engagement for the payment of money to bearer on demand issued by any person carrying on the business of banking in any part of the world, or issued by or under the authority of any State or Sovereign Power, and intended to be used as equivalent to, or as a substitute for, money.

489B. Whoever sells to, or buys or receives from, any other person, or otherwise traffics in, or uses as genuine, any forged or counterfeit currency-note or bank-note knowing or having reason to believe the same to be forged or counterfeit, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

489C. Whoever has in his possession any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit, and intending to use the same as genuine, or that it may be used as genuine, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

489D. Whoever makes, or performs any part of the process of making, or buys or sells or disposes of, or has in his possession, any machinery, instrument, or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for forging

* Ss. 489 A, 489 B, 489 C, and 489 D have been added after s. 489 by the Currency Notes Forgery Act (XII. of 1899), s. 2.

or counterfeiting any currency-note or bank-note, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

CHAPTER XIX.*

OF THE CRIMINAL BREACH OF CONTRACTS OF SERVICE.

490. Whoever, being bound by a lawful contract to render his personal service in conveying or conducting any person or any property from one place to another place, or to act as servant to any person during a voyage or journey, or to guard any person or property during a voyage or journey, voluntarily omits so to do, except in the case of illness or ill treatment, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to one hundred rupees, or with both.

Illustrations.

(a.) *A*, a palanquin-bearer, being bound by legal contract to carry *Z* from one place to another, runs away in the middle of the stage : *A* has committed the offence defined in this section.

(b.) *A*, a cooly, being bound by lawful contract to carry *Z*'s baggage from one place to another, throws the baggage away : *A* has committed the offence defined in this section.

(c.) *A*, a proprietor of bullocks, being bound by legal contract to convey goods on his bullocks from one place to another, illegally omits to do so : *A* has committed the offence defined in this section.

(d.) *A*, by unlawful means, compels *B*, a cooly, to carry his baggage. *B*, in the course of the journey, puts down the baggage and runs away : Here, as *B* was not lawfully bound to carry the baggage, he has not committed any offence.

Explanation.—It is not necessary to this offence that the contract should be made with the person for whom the service is to be

* Cognisance may be taken of an offence under Ch. XIX. only on complaint by an aggrieved party.—See the Code of Criminal Procedure (Act V. of 1898), s. 198.

Offences punishable under Ch. XIX. are compoundable.—See the Code of Criminal Procedure (Act V. of 1898), s. 345. As to stage of proceedings at which no composition is allowable without the leave of the Court, see *ibid*, sub-s. (5).

performed. It is sufficient if the contract is legally made with any person, either expressly or impliedly, by the person who is to perform the service.

Illustration.

A contracts with a dak company to drive his carriage for a month. *B* employs the dak company to convey him on a journey, and, during the month, the company supplies *B* with a carriage which is driven by *A*. *A*, in the course of the journey, voluntarily leaves the carriage: Here, although *A* did not contract with *B*, *A* is guilty of an offence under this section.

491. Whoever, being bound by a lawful contract to attend on, or to supply the wants of, any person who, by reason of youth or of unsoundness of mind, or of a disease or bodily weakness, is helpless or incapable of providing for his own safety, or of supplying his own wants, voluntarily omits so to do, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

492. Whoever, being bound by lawful contract in writing to work for another person as an artificer, workman, or labourer, for a period not more than three years, at any place within British India, to which, by virtue of the contract, he has been, or is to be, conveyed at the expense of such other, voluntarily deserts the service of that other during the continuance of his contract, or, without reasonable cause, refuses to perform the service which he has contracted to perform, such service being reasonable and proper service, shall be punished with imprisonment of either description for a term not exceeding one month, or with fine not exceeding double the amount of such expense, or with both, unless the employer has ill-treated him, or neglected to perform the contract on his part.

CHAPTER XX.*

OF OFFENCES RELATING TO MARRIAGE.

493. Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him, and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

494. Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Exception.—This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time, provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state or facts, so far as the same are within his or her knowledge.

495. Whoever commits the offence defined in the last preceding section, having concealed, from the person with whom the subsequent marriage is contracted, the fact of the former marriage, shall be punished with

* Cognisance may be taken of an offence under s. 493, 494, 495, or 496, only on complaint by an aggrieved party, and of an offence under s. 497 or 498 only on complaint by the husband or guardian of the woman. —See the Code of Criminal Procedure (Act V. of 1898), ss. 198, 199.

Offences punishable under ss. 497 and 498 are compoundable.—See *ibid*, s. 345. As to stage of proceedings under ss. 497 and 498 at which no composition is allowable without the leave of the Court, see *ibid*, sub-s. (5).

As to punishment for offences under ss. 497 and 498, enquired into by a Council of Elders in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), s. 14.

imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

496. Whoever dishonestly or with a fraudulent intention goes through the ceremony of being married, knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

497. Whoever has sexual intercourse with a person who is, and whom he knows or has reason to believe to be, the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine or with both. In such case the wife* shall not be punishable as an abettor.

498. Whoever takes or entices away any woman, who is, and whom he knows or has reason to believe to be, the wife of any other man, from that man, or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any such woman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

* In the Punjab Frontier Districts and Baluchistan, a married woman is punishable for adultery. —See the Punjab Frontier Crimes Regulation (IV. of 1887), s. 32. As to punishment, see also s. 14 of that Regulation.

CHAPTER XXI.*

OF DEFAMATION.

499. Whoever, by words either spoken or intended to be, read, or by signs, or by visible representations, makes or publishes any imputation concerning any person, intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Explanation 1.—It may amount to defamation to impute anything to a deceased person if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2.—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3.—An imputation in the form of an alternative, or expressed ironically, may amount to defamation.

Explanation 4.—No imputation is said to harm a person's reputation unless that imputation, directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

Illustrations.

(a.) A says, "Z is an honest man; he never stole B's watch," intending to cause it to be believed that Z did steal B's watch : This is defamation unless it fall within one of the exceptions.

(b.) A is asked, who stole B's watch ? A points to Z, intending to cause it to be believed that Z stole B's watch : This is defamation unless it fall within one of the exceptions.

* Cognisance may be taken of an offence under Ch. XXI. only on complaint by an aggrieved party.—See the Code of Criminal Procedure (Act V. of 1898), s. 198.

Offences punishable under s. 500, 501, or 502 are compoundable.—See *ibid*, s. 345. As to stage of proceedings at which no composition is allowable without the leave of the Court, see *ibid*, sub-s. (5).

For power to order the destruction of copies of the thing in respect of which a conviction under s. 501 or 502 is had, see *ibid*, s. 521.

(c.) *A* draws a picture of *Z* running away with *B*'s watch, intending it to be believed that *Z* stole *B*'s watch : This is defamation unless it fall within one of the exceptions.

First Exception.—It is not defamation to impute anything which is true concerning any person if it be for the public good that the imputation should be made or published. Imputation of truth which public good requires to be made or published. Whether or not it is for the public good is a question of fact.

Second Exception.—It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no farther. Public conduct of public servants.

Third Exception.—It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no farther. Conduct of any person touching any public question.

Illustration.

It is not defamation in *A* to express in good faith any opinion whatever respecting *Z*'s conduct in petitioning Government on a public question, in signing a requisition for a meeting on a public question, in presiding or attending at such a meeting, in forming or joining any society which invites the public support, in voting or canvassing for a particular candidate for any situation in the efficient discharge of the duties of which the public is interested.

Fourth Exception.—It is not defamation to publish a substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings. Publication of reports of proceedings of Courts.

Explanation.—A Justice of the Peace or other officer holding an inquiry in open Court preliminary to a trial in a Court of Justice, is a Court within the meaning of the above section.

Fifth Exception.—It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness, or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no farther. Merits of case decided in Court ; or conduct of witnesses and others concerned.

Illustrations.

(a.) *A* says, "I think *Z*'s evidence on that trial is so contradictory that he must be stupid or dishonest." *A* is within this exception if he says this in good faith, inasmuch as the opinion which he expresses respects *Z*'s character as it appears in *Z*'s conduct as a witness, and no farther.

(b.) But, if *A* says, "I do not believe what *Z* asserted at that trial, because I know him to be a man without veracity," *A* is not within this exception, inasmuch as the opinion which he expresses of *Z*'s character is an opinion not founded on *Z*'s conduct as a witness.

Sixth Exception.—It is not defamation to express in good faith
 Merits of public perfor- any opinion respecting the merits of
 mance. any performance which its author has
 submitted to the judgment of the public, or respecting the charac-
 ter of the author, so far as his character appears in such per-
 formance, and no farther.

Explanation.—A performance may be submitted to the judg-
 ment of the public expressly, or by acts on the part of the author
 which imply such submission to the judgment of the public.

Illustrations.

(a.) A person who publishes a book submits that book to the judgment of the public.

(b.) A person who makes a speech in public submits that speech to the judgment of the public.

(c.) An actor or singer, who appears on a public stage, submits his acting or singing to the judgment of the public.

(d.) *A* says of a book published by *Z*, "*Z*'s book is foolish, *Z* must be a weak man; *Z*'s book is indecent, *Z* must be a man of impure mind." *A* is within this exception if he says this in good faith, inasmuch as the opinion which he expresses of *Z* respects *Z*'s character only so far as it appears in *Z*'s book, and no farther.

(e.) But, if *A* says, "I am not surprised that *Z*'s book is foolish and indecent, for he is a weak man, and a libertine," *A* is not within this exception, inasmuch as the opinion which he expresses of *Z*'s character is an opinion not founded on *Z*'s book.

Seventh Exception.—It is not defamation in a person having
 Censure passed in good over another any authority, either con-
 faith by person having law- ferred by law, or arising out of a lawful
 ful authority over another. contract made with that other, to pass
 in good faith any censure on the conduct of that other in matters
 to which such lawful authority relates.

Illustration.

A Judge censuring in good faith the conduct of a witness, or of an officer of the Court; a head of a department censuring in good faith those who are under his orders; a parent censuring in good faith a child in the presence of other children; a school-master, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils; a master censuring a servant in good faith for remissness in service; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier—are within this exception.

Eighth Exception.—It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

Illustration.

If *A* in good faith accuses *Z* before a Magistrate; if *A* in good faith complains of the conduct of *Z*, a servant, to *Z*'s master; if *A* in good faith complains of the conduct of *Z*, a child, to *Z*'s father—*A* is within this exception.

Ninth Exception.—It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interest of the person making it, or of any other person, or for the public good.

Illustrations.

(a.) *A*, a shop-keeper, says to *B*, who manages his business, "Sell nothing to *Z* unless he pays you ready money, for I have no opinion of his honesty." *A* is within the exception if he has made this imputation on *Z* in good faith for the protection of his own interests.

(b.) *A*, a Magistrate, in making a report to his superior officer, casts an imputation on the character of *Z*: Here, if the imputation is made in good faith, and for the public good, *A* is within the exception.

Tenth Exception.—It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

500. Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Punishment for defamation.

501. Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Printing or engraving matter known to be defamatory.

502. Whoever sells or offers for sale any printed or engraved substance containing defamatory matter, knowing that it contains such matter, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Sale of printed or engraved substance containing defamatory matter.

CHAPTER XXII.*

OF CRIMINAL INTIMIDATION, INSULT, AND ANNOYANCE.

503. Whoever threatens another with any injury to his person, reputation, or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Criminal intimidation.

Explanation.—A threat to injure the reputation of any deceased person in whom the person threatened is interested is within this section.

Illustration.

A, for the purpose of inducing B to desist from prosecuting a civil suit, threatens to burn B's house : A is guilty of criminal intimidation.

504. Whoever intentionally insults, and thereby gives provocation to, any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment

Intentional insult with intent to provoke breach of the peace.

* An offence punishable under s. 504 and certain offences punishable under s. 506 are compoundable.—See the Code of Criminal Procedure (Act V. of 1898), s. 345. As to stage of proceedings at which no composition is allowable without the leave of the Court, see *ibid*, sub-s. (5).

of either description for a term which may extend to two years, or with fine, or with both.

Statements conducing to public mischief. **505.*** Whoever makes, publishes, or circulates any statement, rumour, or report,—

- (a) with intent to cause, or which is likely to cause, any officer, soldier, or sailor in the army or navy of Her Majesty, or in the Royal Indian Marine, or in the Imperial Service Troops, to mutiny, or otherwise disregard or fail in his duty as such, or
- (b) with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public, whereby any person may be induced to commit an offence against the State, or against the public tranquillity; or
- (c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community,

shall be punished with imprisonment which may extend to two years, or with fine, or with both.

Exception.—It does not amount to an offence within the meaning of this section when the person making, publishing, or circulating any such statement, rumour, or report, has reasonable grounds for believing that such statement, rumour, or report is true, and makes, publishes, or circulates it without any such intent as aforesaid.

506. Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

and, if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or grievous hurt, &c. or to cause an offence punishable with death or transportation, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

* S. 505 has been substituted for the original by the Indian Penal Code Amendment Act (IV. of 1898), s. 6.—See Report of Select Committee, *Gazette of India*, Pt. V., p. 15.

507. Whoever commits the offence of criminal intimidation by an anonymous communication, or having taken precaution to conceal the name or abode of the person from whom the threat comes, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to the punishment provided for the offence by the last-preceding section.

Act caused by inducing person to believe that he will be rendered an object of divine displeasure.

508. Whoever voluntarily causes or attempts to cause any person to do anything which that person is not legally bound to do, or omit to do anything which he is legally entitled to do,

by inducing or attempting to induce that person to believe that he or any person in whom he is interested will become, or will be rendered by some act of the offender, an object of divine displeasure, if he does not do the thing which it is the object of the offender to cause him to do, or if he does the thing which it is the object of the offender to cause him to omit,

shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Illustrations.

(a.) A sits dharna at Z's door with the intention of causing it to be believed that, by so sitting, he renders Z an object of divine displeasure: A has committed the offence defined in this section.

(b.) A threatens Z that, unless Z performs a certain act, A will kill one of A's own children under such circumstances that the killing would be believed to render Z an object of divine displeasure: A has committed the offence defined in this section.

509. Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

510. Whoever, in a state of intoxication, appears in any public place, or in any place which it is a trespass in him to enter, and there conducts himself in such a manner as to cause annoyance to any per-

Misconduct in public by a drunken person.

son, shall be punished with simple imprisonment for a term which may extend to twenty-four hours, or with fine which may extend to ten rupees, or with both.

CHAPTER XXIII.*

OF ATTEMPTS TO COMMIT OFFENCES.

511. Whoever attempts to commit an offence punishable by this Code with transportation or imprisonment, or to cause such an offence to be committed, and, in such attempt, does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with transportation or imprisonment of any description provided for the offence, for a term of transportation or imprisonment which may extend to one half of the longest term provided for that offence, or, with such fine as is provided for the offence, or with both.

Illustrations.

(a.) A makes an attempt to steal some jewels by breaking open a box, and finds, after so opening the box, that there is no jewel in it: He has done an act towards the commission of theft, and therefore is guilty under this section.

(b) A makes an attempt to pick the pocket of Z by thrusting his hand into Z's pocket. A fails in the attempt in consequence of Z's having nothing in his pocket: A is guilty under this section.

* NOTE.—Ss. 13 and 15 of the Indian Penal Code Amendment Act (XXVII. of 1870) enact as follows:—

13. [*Application of certain chapters of Penal Code.*]—The following chapters of the same Code, namely, IV. (*General Exceptions*), V. (*Of Abetment*), and XXIII. (*Of Attempts to commit Offences*) shall apply to offences punishable under the said ss. 121A, 294A, and 304A; and the said Chapters IV. and V. shall apply to offences punishable under "ss. 124A, 225A, and 225B." [The words and figures quoted have been substituted for the words and figures, "said sections 124A and 225A," by the Second Schedule to the Repealing and Amending Act (XII. of 1891).]

15. [*Saving of special and local laws.*]—Nothing contained in this Act (XXVII. of 1870) shall be taken to affect any of the provisions of any special or local law.

Attempts to commit certain offences are compoundable.—See the Code of Criminal Procedure (Act V. of 1893), s. 345.

As to stage of proceedings at which no composition is allowable without the leave of the Court, see *ibid*, sub-s. (5).

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ACT NO. XI. OF 1878:

The Indian Arms Act, 1878.*

RECEIVED G.-G.'s ASSENT ON 15TH MARCH 1878.

*An Act to consolidate and amend the Law relating to Arms,
Ammunition, and Military Stores.*

Preamble. WHEREAS it is expedient to consolidate and amend the law relating to arms, ammunition, and military stores; It is hereby enacted as follows:—

I.—Preliminary.

Short title.
Local extent.

1. This Act may be called "The Indian Arms Act, 1878;" and it extends to the whole of British India.†

* For the Statement of Objects and Reasons, see Gazette of India, 1877, Pt. V., p. 650; for Discussion in Council, see *ibid*, 1877, Supplement, pp. 3016 and 3030; *ibid*, 1878, Supplement, pp. 435 and 453.

Act XI. of 1878 has been declared in force in Upper Burma generally (except the Shan States) [see the Upper Burma Laws Act (XX. of 1886), s. 6]; and in the Santhal Parganas [see the Santhal Parganas' Settlement Regulation (III. of 1872) as amended by the Santhal Parganas' Laws Regulation (III. of 1886), s. 3 (a)].

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act (XIV. of 1874), to be in force in the District of Hazaribagh, Lohardaga, and Manbhum, and in Pargana Dhalbhum and the Kolhan in the District of Singbhum (see Gazette of India, 1881, Pt. I., p. 504). The District of Lohardaga included at this time the present District of Palamau, which was separated in 1894.

It has been extended, by notification under s. 5 of the last-mentioned Act, to British Baluchistan, with certain exceptions.—See Gazette of India, 1895, Pt. II., p. 921.

As to the trial in a presidency-town of offences against the Act, see the Code of Criminal Procedure (Act V. of 1898), s. 184.

A license granted under the Indian Explosive Act (IV. of 1884), for the manufacture, possession, sale, transport, or importation of an explosive, may be given the effect of a like license granted under the Indian Arms Act (XI. of 1878).—See Act IV. of 1884, s. 15.

† As to definition of "British India," see the General Clauses Act (X. of 1897), s. 1 (7).

Savings. But nothing herein contained shall apply to—

(a) arms, ammunition, or military stores on board any sea-going vessel, and forming part of her ordinary armament or equipment, or

(b) the manufacture, conversion, sale, import, export, transport, bearing, or possession of arms, ammunition, or military stores by order of the Government, or by a public servant, or a volunteer enrolled under the Indian Volunteers Act, 1869,* in the course of his duty as such public servant or volunteer.

Commencement. 2. This Act shall come into force on such day† as the Governor-General in Council, by notification in the Gazette of India, appoints.

Repeal of enactments. 3. On and from that day, the enactments mentioned in the first schedule hereto annexed shall be repealed to the extent specified in the third column of the said schedule. But all authorities and permissions given, licenses and exemptions granted, orders and appointments made, notifications published, and rules, conditions, and forms prescribed, under any enactment hereby repealed, shall be deemed to be respectively given, granted, made, published, and prescribed under this Act.

And all such authorities, permissions, licenses, and exemptions shall, except as otherwise provided by this Act, continue in force for the periods for which they may have been given or granted respectively, or, where no such period is expressly fixed, for one year from the date† on which this Act comes into force, and shall then cease to have effect.

Interpretation-clause. 4. In this Act, unless there be something repugnant in the subject or context,—

“cannon” includes also all howitzers, mortars, wall-pieces, mitrailleuses, and other ordnance and machine-guns, all parts of the same, and all carriage, platforms, and appliances for mounting, transporting, and serving the same :

“arms” includes fire-arms, bayonets, swords, daggers, spears, spearheads, and bows and arrows, also cannon and parts of arms, and machinery for manufacturing arms :

* See Act XX. of 1869.

† Act XI. of 1878 came into force on Oct. 1, 1878.—See Notification No. 1169, dated June 27, 1878, Gazette of India, 1878, Pt. I., p. 389.

“ammunition” includes also all articles specially designed for torpedo service sub-marine mining, rockets, guncotton, dynamite, lithofracteur, and other explosive or fulminating materials, gunflints, gunwads, percussion caps, fuses, and friction tubes, all parts of ammunition, and all machinery for manufacturing ammunition, but does not include lead, sulphur, or saltpetre :

“military stores,” in any section of this Act, as applied to any part of British India, means any military stores to which the Governor-General in Council may, from time to time, by notification in the Gazette of India, specially extend such section in such part,* and includes also all lead, sulphur, saltpetre, and other material to which the Governor-General in Council may, from time to time, so extend such section :

“license” means a license granted under this Act, and
“licensed” means holding such license.

II.—Manufacture, Conversion, and Sale.

5. No person shall manufacture, convert, or keep, offer, or expose for sale, any arms, ammunition, or military stores, except under a license, and in the manner and to the extent permitted thereby.

Unlicensed manufacture, conversion, and sale prohibited.

Nothing herein contained shall prevent any person from selling any arms or ammunition, which he lawfully possesses for his own private use, to any person who is not, by any enactment for the time being in force, prohibited from possessing the same; but every person, so selling arms or ammunition to any person other than a person entitled to possess the same by reason of an exemption under section 27 of this Act, shall, without unnecessary delay, give to the Magistrate of the District,† or to the officer in charge of the nearest police-station, notice of the sale, and of the purchaser's name and address.

* Bird-shot and bullets in excess of certain quantities have, in exercise of this power, been declared to be military stores.—See Notification No. 734, dated 19th April 1894, Gazette of India, 1894, Pt. I., p. 206.

† Now District Magistrate.—See the Code of Criminal Procedure (Act V. of 1898), s. 3.

III.—Import, Export, and Transport.

6. No person shall bring or take, by sea* or by land, into or out of British India, any arms, ammunition,* or military stores, except under a license, and in the manner and to the extent permitted by such license.

Nothing in the first clause of this section extends to arms (other than cannon) or ammunition imported or exported in reasonable quantities for his own private use by any person lawfully entitled to possess such arms or ammunition; but the Collector of Customs or any other officer empowered by the Local Government in this behalf by name or in virtue of his office may at any time detain such arms or ammunition until he receives the orders of the Local Government thereon.

Explanation.—Arms, ammunition, and military stores, taken from one part of British India to another by sea or across intervening territory not being part of British India, are taken out of, and brought into, British India within the meaning of this section.

7. Notwithstanding anything contained in the Sea Customs Act, 1878,† no arms, ammunition, or military stores shall be deposited in any warehouse licensed under section 16 of that Act without the sanction of the Local Government.

8. [*Levy of duties on arms, &c., imported by sea.*] Repealed by Act XI. of 1882, s. 2 and Sch. 1. Re-repealed by the Repealing and Amending Act (XII. of 1891).

9. [*Power to impose duty on imports by land.*] Repealed by the Repealing and Amending Act (XII. of 1891).

10. The Governor-General in Council may, from time to time, by notification in the Gazette of India,—

* Arms, ammunition, and military stores, brought into an Indian port, and declared under manifest to be consignments to another port, and not transhipped, have been exempted from the operation of s. 6. See Notifications issued in 1879, 1880, and 1880, Gazette of India, 1879, 1882, and 1882 Pt. I., pp. 580, 49, and 129, respectively.

Gun-wads, wire cartridges, and bullets have been excluded from the operation of s. 6.—See Notification No. 591, dated 29th April 1896, Gazette of India, 1896, Pt. I., p. 266.

† See Act VIII. of 1878.

(a) regulate or prohibit the transport of any description of arms, ammunition, or military stores over the whole of British India or any part thereof, either altogether or except under a license, and to the extent and in the manner permitted by such license, and

(b) cancel any such notification.

Explanation.—Arms, ammunition, or military stores, transhipped at a port in British India, are transported within the meaning of this section.

Transhipment of arms.

11. The Local Government, with the previous sanction of the Governor-General in Council, may, at any places along the boundary-line between British India and foreign territory, and at such distance within such line as it deems expedient, establish searching posts, at which all vessels, carts, and baggage-animals, and all boxes, bales, and packages in transit, may be stopped and searched for arms, ammunition, and military stores by any officer empowered by such Government in this behalf by name, or in virtue of his office.

12. When any person is found carrying or conveying any arms, ammunition, or military stores, whether covered by a license or not, in such manner or under such circumstance as to afford just grounds of suspicion that the same are being carried by him with intent to use them, or that the same may be used, for any unlawful purpose, any person may, without warrant, apprehend him, and take such arms, ammunition, or military stores from him.

Any person so apprehended, and any arms, ammunition, or military stores so taken, by a person not being a Magistrate or police-officer, shall be delivered over as soon as possible to a police-officer.

Procedure where arrest made by person not a Magistrate or a police-officer.

All persons apprehended by, or delivered to, a police-officer, and all arms and ammunition seized by, or delivered to, any such officer under this section, shall be taken without unnecessary delay before a Magistrate.

IV.—Going armed and possessing Arms, &c.

13. No person shall go armed with any arms except under a license, and to the extent and in the manner permitted thereby.

Prohibition of going armed without license.

Any person so going armed without a license, or in contravention of its provisions, may be disarmed by any Magistrate, police-officer, or other person empowered by the Local Government in this behalf by name, or by virtue of his office.

14. No person shall have in his possession or under his control any cannon or fire-arms, or any ammunition or military stores, except under a license, and in the manner and to the extent permitted thereby.*

15. In any place to which section 32, clause (2), of Act No. XXXI. of 1860,† applies at the time this Act comes into force, or to which the Local Government, with the previous sanction of the Governor-General in Council, may, by notification in the local official Gazette, specially extend this section, no person shall have in his possession any arms of any description except under a license, and in the manner and to the extent permitted thereby.

16. Any person possessing arms, ammunition, or military stores the possession whereof by him has, in consequence of the cancellation or expiry of a license, or by the issue of a notification under section 15, become unlawful, shall deposit the same without unnecessary delay with the officer in charge of the nearest police-station.

If the owner of anything deposited under this section does not, within three years from the date on which such thing is so deposited, produce a license authorizing him to possess the same, and apply for delivery of the same, such thing shall be forfeited to Her Majesty.

17. The Governor-General in Council may, from time to time by notification in the Gazette of India, make rules to determine the officers by whom, the form in which, and the terms and conditions‡ on and subject to which, any license shall be granted; and may, by such rules among other matters,—

* In s. 24, the next three paragraphs have been omitted, having been repealed by the Repealing and Amending Act (XII. of 1891).

† Act XXXI. of 1860 has been repealed by s. 3 of this Act.—See s. 3 and Sch. I.

‡ For conditions annexed to licenses to import arms, &c., into Aden, see Notification No. 1016, dated 26th May 1879, Gazette of India, 1879, Pt. I., p. 381.

- (a) fix the period for which such license shall continue in force ;
- (b) fix a fee payable by stamp or otherwise in respect of any such license granted in a place to which section 32, clause (2), or Act No XXXI. of 1860,* applies at the time this Act comes into force, or in respect of any such license other than a license for possession granted in any other place ;
- (c) direct that the holder of any such license other than a license for possession shall keep a record or account, in such form as the Local Government may prescribe, of anything done under such license, and exhibit such record or account when called upon by an officer of Government to do so,
- (d) empower any officer of Government to enter and inspect any premises in which arms, ammunition, or military stores, are manufactured or kept by any person holding a license of the description referred to in section 5 or section 6 ;
- (e) direct that any such person shall exhibit the entire stock of arms, ammunition, and military stores in his possession or under his control to any officer of Government so empowered, and
- (f) require the person holding any license or acting under any license to produce the same, and to produce or account for the arms, ammunition, or military stores covered by the same when called upon by an officer of Government so to do.

V.—Licenses.

Cancelling and suspension
of license.

18. Any license may be cancelled
or suspended—

- (a) by the officer by whom the same was granted, or by any authority to which he may be subordinate, or by any District Magistrate, or Commissioner of Police in a Presidency-town, within the local limits of whose jurisdiction the holder of such license may be, when, for reasons to be recorded in writing, such officer, authority, Magistrate, or Commissioner deems it necessary, for the security of the public peace, to cancel or suspend such license ; or
- (b) by any Judge or Magistrate before whom the holder of such license is convicted of an offence against this Act, or against the rules made under this Act ; and

* Act XXXI. of 1860 has been repealed by s. 3 of this Act.—See s. 3 and Sch. I.

the Local Government may, at its discretion, by a notification in the local official Gazette, cancel or suspend all or any licenses throughout the whole or any portion of the territories under its administration.

VI.—Penalties.

For breach of sections 5, 6, 10, and 13 to 17.

19.* Whoever commits any of the following offences (namely):—

(a) manufactures, converts, or sells, or keeps, offers, or exposes for sale, any arms, ammunition, or military stores, in contravention of the provisions of section 5 ;

(b) fails to give notice as required by the same section :

(c) imports or exports any arms, ammunition, or military stores, in contravention of the provisions of section 6 ;

(d) transports any arms, ammunition, or military stores, in contravention of a regulation or prohibition issued under section 10 ;

(e) goes armed in contravention of the provisions of section 13 ;

(f) has in his possession or under his control any arms, ammunition, or military stores, in contravention of the provisions of section 14 or section 15 ;

(g) intentionally makes any false entry in a record or account which, by a rule made under section 17, clause (c), he is required to keep ;

(h) intentionally fails to exhibit anything which, by a rule made under section 17, clause (e), he is required to exhibit ; or

(i) fails to deposit arms, ammunition, or military stores, as required by section 14 or section 16,

shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

20. Whoever does any act mentioned in clause (a), (c), (d), or

(f) of section 19, in such manner as to indicate an intention that such act may not be known to any public servant as defined in the Indian Penal Code, or to any person employed upon a railway, or to the servant of any public carrier,

* Offences under this section are bailable—See Sch. II., Code of Criminal Procedure, Act V. of 1898, third last entry.

and whoever, on any search being made under section 25,
 For concealing arms, &c. : conceals, or attempts to conceal, any
 arms, ammunition, or military stores,

shall be punished with imprisonment for a term which may extend
 to seven years, or with fine, or with both.

21. Whoever, in violation of a condition subject to which a
 For breach of license. : license has been granted, does, or omits
 to do, any act, shall, when the doing or
 omitting to do such act is not punishable under section 19 or section
 20, be punished with imprisonment for a term which may extend to
 six months, or with fine which may extend to five hundred rupees,
 or with both.

22. Whoever knowingly purchases any arms, ammunition
 For knowingly purchasing arms, &c., from unlicensed person. : military stores from any person not
 licensed or authorized under the proviso
 to section 5 to sell the same ; or

delivers any arms, ammunition, or military stores into the
 For delivering arms, &c., to person not authorized to possess them. possession of any person without pre-
 viously ascertaining that such person is
 legally authorized to possess the same,
 shall be punished with imprisonment for a term which may
 extend to six months, or with fine which may extend to five hundred
 rupees, or with both.

23. Any person violating any rule made under this Act, and
 Penalty for breach of rule. for the violation of which no penalty is
 provided by this Act, shall be punished
 with imprisonment for a term which may extend to one month, or
 with fine which may extend to two hundred rupees, or with both.

24. When any person is convicted of an offence punishable
 Power to confiscate. under this Act, committed by him in re-
 spect of any arms, ammunition, or mili-
 tary stores, it shall be in the discretion of the convicting Court or
 Magistrate further to direct that the whole or any portion of such
 arms, ammunition, or military stores, and any vessel, cart, or bag-
 gage-animal used to convey the same, and any box, package, or
 bale in which the same may have been concealed, together with the
 other contents of such box, package, or bale, shall be confiscated.

VII.—Miscellaneous.

25. Whenever any Magistrate has reason to believe that any person residing within the Local limits of his jurisdiction has in his possession any arms, ammunition, or military stores for any unlawful purpose or that such person cannot be left in the possession of any such arms, ammunition, or military stores without danger to the public peace,

such Magistrate, having first recorded the grounds of his belief, may cause a search to be made of the house or premises occupied by such person, or in which such Magistrate has reason to believe such arms, ammunition, or military stores are or is to be found, and may seize and detain the same, although covered by a license in safe custody for such time as he thinks necessary.

The search in such case shall be conducted by, or in the presence of, a Magistrate, or by, or in the presence of, some officer specially empowered in this behalf by name or in virtue of his office by the Local Government.

26. The Local Government may at any time order or cause to be seized any arms, ammunition, or military stores in the possession of any person, notwithstanding that such person is licensed to possess the same, and may detain the same for such time as it thinks necessary for the public safety.

27. The Governor-General in Council may, from time to time, by notification* published in the Gazette of India,—
Power to exempt.

* For notification issued under this section, together with rules by the Governor-General under ss. 4, 9, 11 of the Act, see No. 518, dated 6th March 1879, Gazette of India, 1879, Pt. I., p. 141.

A revised edition of this notification corrected up to the 9th July 1897 has been published by the Home Department of the Government of India.

For order exempting residents of Pondicherry, being Europeans, from payment of import-duty on guns, when holding passports from their own authorities, see Notification No. 2257, Gazette of India, 1879, Pt. I., p. 782.

For order exempting Gurkha pensioners from all prohibitions and directions in respect of Kukris, see Notification No. 1201, Gazette of India, 1891, Pt. I., p. 430.

For order withdrawing part of British India from operation of any prohibition or direction contained in the Act, see Notification No. 496, dated April 14, 1893, Gazette of India, 1893, Pt. I., p. 201.

- (a) exempt any person by name or in virtue of his office, or any class of persons, or exclude any description of arms or ammunition, or withdraw any part of British India, from the operation of any prohibition or direction contained in this Act; and
- (b) cancel any such notification, and again subject the persons or things, or the part of British India comprised therein, to the operation of such prohibition or direction.

28. Every person aware of the commission of any offence punishable under this Act shall, in the absence of reasonable excuse, the burden of proving which shall lie upon such person, give information of the same to the nearest police-officer or Magistrate; and

every person employed upon any railway or by any public carrier shall, in the absence of reasonable excuse, the burden of proving which shall lie upon such person, give information to the nearest police-officer regarding any box, package, or bale in transit which he may have reason to suspect contains arms, ammunition, or military stores, in respect of which an offence against this Act has been or is being committed.

29. Where an offence punishable under section 19, clause (f), has been committed within three months from the date on which this Act comes into force* in any province, district, or place to which section 32, clause (2), of Act XXXI. of 1860,† applies at such date, or where such an offence has been committed in any part of British India not being such a district, province, or place, no proceedings shall be instituted against any person in respect of such offence without the previous sanction of the District Magistrate, or, in a Presidency-town, of the Commissioner of Police.

30. Where a search is to be made under the Code of Criminal Procedure or the Presidency Magistrate's Act, 1871, in the course of any proceedings instituted in respect of an offence

* Came into force on Oct. 1, 1878.

† Repealed by this Act.—See s. 3 and Sch. I.

punishable under section 19, clause (f), such search shall, notwithstanding anything contained in the said Code or Act,* be made in the presence of some officer specially appointed by name or in virtue of his office by the Local Government in this behalf, and not otherwise.

31. Nothing in this Act shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act or the rules made under it, or from being liable under such other law to any higher punishment or penalty than that provided by this Act. provided that no person shall be punished twice for the same offence.

32. The Local Government may, from time to time, by notification in the local official Gazette, direct a census to be taken of all fire-arms in any local area, and empower any person by name or in virtue of his office to take such census.

On the issue of any such notification, all persons possessing any such arms in such area shall furnish to the person so empowered such information as he may require in reference thereto, and shall produced such arms to him if he so requires.

Any person refusing or neglecting to produce any such arms when so required shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, with both.

33. No proceeding other than a suit shall be commenced against any person for anything done in pursuance of this Act without having given him at least one month's previous notice in writing of the intended proceeding, and of the cause thereof, nor after the expiration of three months from the accrual of such cause.

* For the references to Act, X. of 1872 and Act IV. of 1877, read now Act V. of 1898.

THE FIRST SCHEDULE.

ENACTMENTS REPEALED.

(See section 3.)

Number and year.	Title.	Extent of repeal.
XVIII. of 1841 ...	An Act for consolidating and amending the enactments concerning the exportation of Military Stores.	So much as has not been repealed.
XXX. of 1854 ...	An Act to provide for the levy of duties of customs in the Arakan, Pegu, Martaban, and Tenasserim Provinces.	In the preamble, the words, "and that the exportation of munitions of war from any of these provinces into Foreign States should be prohibited " Section 11.*
XXXI. of 1860 ...	An Act relating to the manufacture, importation, and sale of arms and ammunition, and for regulating the right to keep and use the same, and to give power of disarming in certain cases.	So much as has not been repealed.
VI. of 1866 ...	An Act to continue Act No. XXXI. of 1860 (relating to the manufacture, importation, and sale of arms and ammunition, and for regulating the right to keep and use the same, and to give power of disarming in certain cases, and for other purposes).	The whole.

* The rest of Act XXX. of 1844 has been repealed by the Upper Burma Laws Act (XX. of 1886), s. 5.

THE FIRST SCHEDULE.—*Contd.*ENACTMENTS REPEALED.—*Contd.*

Number and year.		Title.	Extent of repeal.
III. of 1872	...	The Santhal Parganas Settlement Regulation.	So much of the schedule* as relates to Act XXXI. of 1860 and Act VI. 1866.
IX. of 1874†	...	The Arakan Hill District Laws Regulation, 1874.	So much of the schedule as relates to Act XVIII. of 1841.
XV. of 1874	...	An Act for declaring the local extent of certain enactments, and for other purposes.	So much of the First Schedule as relates to Act XVIII. of 1841.

THE SECOND SCHEDULE.

ARMS, &C., LIABLE TO DUTY.

[Repealed by the Repealing and Amending Act (XII. of 1891).]

* In Ben. Reg. III. of 1872, a new schedule has since been substituted for the schedule here mentioned to have been repealed.

† A Regulation made by the Governor-General in Council under the Government of India Act, 1870 (Stat. 33 Vict., c. 3), for application to the Hill District of Arakan in Burma.

ACT NO. I. OF 1871 :

The Cattle Trespass Act, 1871.*

RECEIVED G.-G.'S ASSENT ON 13TH JANUARY 1871.

An Act to consolidate and amend the Law relating to Trespasses by Cattle.

WHEREAS it is expedient to consolidate and amend the law relating to trespasses by cattle ; It is hereby enacted as follows:—

Preamble.

* For the Statement of Objects and Reasons, see *Gazette of India*, 1870, Pt. V., p. 310 : for Proceedings in Council, see *ibid*, Supplement, pp. 1150, 1200, 1290 ; and Supplement, 1871, p. 178.

Act I. of 1871 has been declared in force in—

- (1) the Santhal Parganas, by Reg. III. of 1872, s. 3, as amended by Reg. III. of 1886 :
- (2) the Arakan Hill District, by Reg. IX. of 1874, s. 3 :
- (3) Upper Burma generally (except the Shan States), by Act XX. of 1886, s. 6 :
- (4) British Baluchistan, by Reg. I. of 1890, s. 3.
- (5) Angul and the Khondmals, by Reg. I. of 1894, s. 3.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts :—

The Districts of Hazaribagh, Lohardaga (including, at this time, the present District of Palamau, which was separated in 1894), and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singhbhum.—See *Gazette of India*, Oct. 22, 1881, Pt. I., p. 504.

The North-Western Provinces Tarai.—See *Gazette of India*, Sep. 23, 1876, Pt. I., p. 505.

As to transfer of functions of Local Government and District Magistrate to local authorities, see the Central Provinces Local Self-Government Act, I. of 1883, s. 9, cl. (f) ; the North-Western Provinces and Oudh Local Boards Act, XIV. of 1883, s. 24, cl. (f) ; and the Punjab District Boards Act, XX. of 1883, s. 20 (2), cl. n.

Act XVIII. of 1883 (*to amend the Cattle Trespass Act, 1871*) is repealed by Act I. of 1891 (*an Act to amend the Cattle Trespass Act, 1871, and to incorporate therein Act XVIII. of 1883*), provided that orders which have been made and notified under that Act (XVIII. of 1883) by the Local Government, and are in force immediately before the commencement of this

CHAPTER I.

PRELIMINARY.

Title and extent.

1.* (1) This Act may be called
 “The Cattle Trespass Act, 1871;” and
 (2) It extends to the whole of British India, except the Presidency-towns and such local areas as the Local Government, by notification† in the official Gazette, may, from time to time, exclude from its operation.

(3) The Local Government may at any time, by notification in the official Gazette, cancel or vary a notification under sub-section (2).

Repeal of Acts.

2. The Acts mentioned in the Schedule hereto annexed are repealed.

References to any of the said Acts in Acts passed subsequently thereto shall be read as if made to this Act.
 References to repealed Acts.

All pounds established, pound-keepers appointed, and villages determined, under Act No. III. of 1857‡ (*relating to trespasses by Cattle*), shall be deemed to be, respectively, established, appointed, and determined under this Act.

Interpretation-clause.

3. In this Act—

‘officer of police’ includes also village watchman; and

‘cattle’ includes also elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats, and kids; “and

“‘local authority’§ means any body of persons for the time being invested by law with the control and administration of any matters within a specified local area; and

Act (I of 1891), shall be deemed to have been made under the Cattle Trespass Act, 1871, as amended by Act I. of 1891.—See Act I. of 1891, s. 10.

Any enactment or document referring to the Cattle Trespass Act, 1871, or to Act XVIII. of 1883 (*to amend the Cattle Trespass Act, 1871*), shall be construed to refer to the Cattle Trespass Act, 1871, as amended by Act I. of 1891.—See Act I. of 1891, s. 12.

* S. 1 has been substituted for the original by Act I. of 1891, s. 1.

† For notification issued by the Government of the N.-W. P. & Oudh under the powers aforesaid, see the N.-W. P. & Oudh List of Local Rules and Orders, Ed. 1894, p. 41.

‡ Repealed by this Act, s. 2 and Sch.

§ Compare the definition with that in s. 3 (28) of the General Clauses Act (X of 1897), which is applied by s. 4 (2) thereof to all Acts passed after the 14th January 1887.

“‘local fund’ means any fund under the control or management of a local authority.”*

CHAPTER II.

POUNDS AND POUND-KEEPERS.

4. Pounds shall be established at such places as the Magistrate of the District, subject to the general control of the Local Government, from time to time, directs.†

The village by which every pound is to be used shall be determined by the Magistrate of the District.

5. The pounds shall be under the control of the Magistrate of the District; and he shall fix, and may, from time to time, alter, the rates of charge for feeding and watering impounded cattle.

Control of pounds.
Rates of charge for feeding
impounded cattle.

6. The Magistrate of the District shall also appoint for each pound a pound-keeper :

Provided that, in the Presidency of Fort St. George, the heads of villages and, in the Presidency of Bombay, the police-patils or (where there are no police patils) the heads of villages, shall be *ex officio* the keepers of village-pounds.

Every pound-keeper appointed by the Magistrate of the District may be suspended or removed by such Magistrate.

Suspension or removal of
pound-keepers.

Any pound-keeper may hold simultaneously any other office under Government.

* The portion quoted in s. 3 have been added thereto by Act I. of 1891, s. 2.

† For rules and forms as to cattle-pounds in Sind, see Bombay List of Local Rules and Orders, Vol. I., Ed. 1896, pp. 69 and 73.

Pound-keepers to be ' public servants.'

Every pound-keeper shall be deemed a " public servant " within the meaning of the Indian Penal Code.

Duties of Pound-keepers.

7. Every pound-keeper shall keep such registers, and furnish such returns, as the Local Government, from time to time, directs.*

8. When cattle are brought to a pound, the pound-keeper shall enter in his register—
To register seizures.

- (a) the number and description of the animals,
- (b) the day and hour on and at which they were so brought,
- (c) the name and residence of the seizer, and
- (d) the name and residence of the owner, if known, and
' shall give the seizer or his agent a copy of the entry.

9. The pound-keeper shall take charge of, feed, and water the cattle until they are disposed of as hereinafter directed.
To take charge of and feed cattle.

CHAPTER III.

IMPOUNDING CATTLE.

10. The cultivator or occupier of any land,
Cattle damaging land.

or any person who has advanced cash for the cultivation of the crop or produce on any land,

or the vendee or mortgagee of such crop or produce or any part thereof,

may seize, or cause to be seized, any cattle trespassing on such land, and doing damage thereto, or to any crop or produce thereon, and " send them, or cause them to be sent, within twenty-four hours,"† to the pound established for the village in which the land is situate.

* For notification prescribing registers and returns in Burma, see *Burma Gazette*. 1893, Pt. I., p. 36, and *ibid*, 1896, Pt. I., pp. 195 and 501.

† In s. 10, the words quoted have been substituted for the words " take them, or cause them to be taken, without unnecessary delay," by Act I. of 1891, s. 3.

All officers of police shall, when required, aid in preventing (a) resistance to such seizures, and (b) rescues from persons making such seizures.

Police to aid seizure.

11.* Persons in charge of public roads, pleasuregrounds, plantations, canals, drainage-works, embankments, and the like, and officers of police, may seize, or cause to be seized, any cattle doing damage to such roads, grounds, plantations, canals, drainage-works, embankments, and the like, or the sides or slopes of such roads, canals, drainage-works, or embankments, or found straying thereon, and shall "send them, or cause them to be sent, within twenty-four hours," † to the nearest pound.

12. For every head of cattle impounded as aforesaid, the pound keeper shall levy a fine‡ according to the following scale§ :—

Fines for cattle impounded.

Elephant	...	...	two rupees.
Camel or buffalo	...	...	eight annas.
Horse, mare, gelding, pony, colt, filly,	mule, bull, bullock,		
cow, or heifer	...	...	four annas.
Calf, ass, or pig	...	...	two „
Ram, ewe, sheep, lamb, goat, or kid	...	...	one anna:

|| Provided that, when it appears to the Local Government from the report of a Magistrate of a District, or on the representation of a local authority, that, in any local area subject to the jurisdiction or control of such Magistrate or authority, cattle are habitually allowed to trespass on land, and damage crops or other produce

* As to the application of this section to—

(a) forests—see Acts VII. of 1878, s. 69, and XIX. of 1881, s. 68; and Regs. VI. of 1887, s. 66 and VII. of 1891, s. 66; and

(b) railways—see Act IX. of 1890, s. 125 (4).

† In s. 11, the words quoted have been substituted for the words "take them without unnecessary delay" by Act I. of 1891, s. 4.

‡ 7 Bom. C. C. 55.

§ For power to prescribe a different scale for cattle impounded under Forest Laws, 1878, see Act VII. of 1878, s. 70; Act XIX. of 1881, s. 69; Reg. VI. of 1887, s. 67; and Reg. VII. of 1891. As to additional penalties in the case of cattle trespassing on a railway, see Act IX. of 1890, s. 125 (1) and (2).

|| To s. 12 this proviso has been added by Act I. of 1891, s. 5 (1).

thereon, the Local Government may, by notification in the official Gazette, direct that, for every head of cattle of any kind specified therein, which may be seized within such local area, and impounded as aforesaid, the pound-keeper shall levy such fine, not exceeding double the fine mentioned in the foregoing scale, as may be prescribed in the notification.*

All fines so levied shall be sent to the Magistrate of the District through such officer as the Local Government, from time to time, directs.†

A list of fines and of the rates of charge for feeding and watering cattle shall be stuck up in a conspicuous place on or near to every pound.

List of fines and charges for feeding.

The Local Government may, at any time, by notification in the official Gazette, cancel or vary a notification under the proviso to the first paragraph of this section.‡

CHAPTER IV.

DELIVERY OR SALE OF CATTLE.

13. If the owner of the impounded cattle or his agent appear and claim the cattle, the pound-keeper shall deliver them to him on payment of the fines and charges incurred in respect of such cattle.

Procedure when owner claims the cattle, and pays fines and charges.

* For notifications under this power issued for various local areas by the—

- (a) Government of Bombay, *see* Bombay List of Local Rules and Orders, Vol. I., Ed. 1896, pp 73 to 84;
- (b) Chief Commissioner, Central Provinces, *see* Central Provinces List of Local Rules and Orders, Ed. 1896, p. 18;
- (c) Government of Madras, *see* Madras List of Local Rules and Orders, Vol. I., Ed 1898 pp 21 and 22;
- (d) Government of the North-Western Provinces and Oudh, *see* the North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, p. 41.

† For notification issued under this clause for (a) Burma, *see* *Burma Gazette*, 1893, Pt. I., p 37.

‡ To s. 12, this paragraph has been added by Act I. of 1891, s. 5 (2).

The owner or his agent, on taking back the cattle, shall sign a receipt for them in the register kept by the pound-keeper.

14. If cattle be not claimed within seven days from the date of their being impounded, the pound-keeper shall report the fact to the officer in charge of the nearest police-station, or to such other officer as the Magistrate of the District appoints in this behalf.

Such officer shall thereupon stick up in a conspicuous part of his office a notice stating—

- (a) the number and description of the cattle,
- (b) the place where they were seized,
- (c) the place where they are impounded,

and shall cause proclamation of the same to be made by beat of drum in the village and at the market-place nearest to the place of seizure.

If the cattle be not claimed within seven days from the date of the notice, they shall be sold by public auction by the said officer, or an officer of his establishment deputed for that purpose, at such place and time, and subject to such conditions, as the Magistrate of the District, by general or special order, from time to time directs:

Provided that, if any such cattle are, in the opinion of the Magistrate of the District, not likely to fetch a fair price if sold as aforesaid, they may be disposed of in such manner as he thinks fit.

15. If the owner or his agent appear and refuse to pay the said fines and expenses, on the ground that the seizure was illegal, and that the owner is about to make a complaint under section 20, then, upon deposit of the fines and charges incurred in respect of the cattle, the cattle shall be delivered to him.

16. If the owner or his agent appear and refuse or omit to pay or (in the case mentioned in section 15) to deposit the said fines and expenses, the cattle, or as many of them as may be necessary, shall be sold by public auction by such officer, at such place and time, and subject to such conditions, as are referred to in section 14.

The fines leviable, and the expenses of feeding and watering, together with the expenses of sale, if any, shall be deducted from the proceeds of the sale.

Deduction of fines and expenses.

The remaining cattle and the balance of the purchase-money, if any, shall be delivered to the owner or his agent, together with an account showing—

- (a) the number of cattle seized,
- (b) the time during which they have been impounded,
- (c) the amount of fines and charges incurred,
- (d) the number of cattle sold,
- (e) the proceeds of sale, and
- (f) the manner in which those proceeds have been disposed of.

The owner or his agent shall give a receipt for the cattle delivered to him, and for the balance of the purchase-money (if any) paid to him according to such account.

Disposal of fines, expenses, and surplus proceeds of sale. **17.** The officer by whom the sale was made shall send to the Magistrate of the District the fines so deducted.

The charges for feeding and watering, deducted under section 16, shall be paid over to the pound-keeper, who shall also retain and appropriate all sums received by him on account of such charges under section 13.

The surplus unclaimed proceeds of the sale of cattle shall be sent to the Magistrate of the District, who shall hold them in deposit for three months, and, if no claim thereto be preferred and established within that period, shall, at its expiry, dispose of them as hereinafter provided.

18. Out of the sums received on account of fines and the unclaimed proceeds of the sale of cattle shall be paid—

- (a) the salaries allowed to pound-keepers under the orders of the Local Government;
- (b) the expenses incurred for the construction and maintenance of pounds, or for any other purpose connected with the execution of this Act;

and the surplus* (if any) shall be applied under orders of the Local Government, to the construction and repair of roads and bridges, and to other purposes of public utility.

* As to the crediting of this surplus to Local Funds, see s. 31, *infra*.

19. No officer of police, or other officer or pound-keeper appointed under the provisions herein contained, shall, directly or indirectly, purchase any cattle at a sale under this Act.

Officers and pound-keepers not to purchase cattle at sales under Act.

No pound-keeper shall release or deliver any impounded cattle otherwise than in accordance with the former part of this chapter unless such release or delivery is ordered by a Magistrate or Civil Court.

Pound-keepers when not to release impounded cattle.

CHAPTER V.*

COMPLAINTS OF ILLEGAL SEIZURE OR DETENTION.

20. Any person whose cattle have been seized under this Act, or, having been so seized, have been detained in contravention of this Act, may, at any time within ten days from the date of the seizure, make a complaint† to the Magistrate of the District or any Magistrate authorized to receive and try charges without reference by the Magistrate of the District.

Power to make complaints.

21. The complaint shall be made, by the complainant in person, or by an agent personally acquainted with the circumstances. It may be either in writing or verbal. If it be verbal, the substance of it shall be taken down in writing by the Magistrate.

Procedure on complaint.

If the Magistrate, on examining the complainant or his agent, sees reason to believe the complaint to be well founded, he shall summon the person complained against, and make an inquiry into the case.

22. If the seizure or detention be adjudged illegal, the Magistrate shall award to the complainant, for the loss caused by the seizure or detention, reasonable compensation, not exceeding one hundred rupees, to be paid by the person who made the seizure or detained the cattle, together with all fines paid and expenses incurred by the complainant in procuring the release of the cattle ;

Compensation for illegal seizure or detention.

* Ch. V. has been substituted for the original by Act I. of 1891, s. 6.

† The term " offence, " as defined in s. 4 (o) of the Code of Criminal Procedure (Act V. of 1898), includes any act in respect of which a complaint may be made under this section.

Offences under this section may be tried in a summary way.—See Act V. of 1898, s. 260 (1) (m).

and, if the cattle have not been released, the Magistrate shall, besides awarding such compensation, order their release, and direct that the fines and expenses leviable under this Act shall be paid by the person who made the seizure or detained the cattle.

23. The compensation, fines, and expenses mentioned in section 22 may be recovered as if they were fines imposed by the Magistrate.*

CHAPTER VI.

PENALTIES.

24. Whoever forcibly opposes the seizure of cattle liable to be seized under this Act,

Penalty for forcibly opposing the seizure of cattle or rescuing the same.

and whoever rescues the same after seizure, either from a pound, or from any person taking or about to take them to a pound, such person being near at hand, and acting under the powers conferred by this Act,

shall, on conviction before a Magistrate, be punished with imprisonment for a period not exceeding six months, or with fine not exceeding five hundred rupees, or with both.

25.† Any fine imposed "under the next following section, or"‡ for the offence of mischief, by causing cattle to trespass on any land, may be recovered by sale of all or any of the cattle by which the trespass was committed, whether they were seized in the act of trespassing or not, and whether they are the property of the person convicted of the offence, or were only in his charge when the trespass was committed.

* See ss. 63 to 70 of the Indian Penal Code (Act XLV. of 1860) and s. 386 of the Code of Criminal Procedure (Act V. of 1898). Compare, also, s. 25 of the General Clauses Act (X. of 1897).

† As to the application of s. 25 in the case of cattle trespassing on a railway, see the Indian Railways Act (IX. of 1890), s. 125 (3).

‡ In s. 25, the words quoted have been inserted by Act I. of 1891, s. 7.

26. Any owner or keeper of pigs who, through neglect or otherwise, damages or causes or permits to be damaged, any land, or any crop or produce of land, or any public road,* by allowing such pigs to trespass thereon, shall, on conviction before a Magistrate, be punished with fine not exceeding ten rupees.

† The Local Government, by notification in the official Gazette, may, from time to time, with respect to any local area specified in the notification, direct that the foregoing portion of this section shall be read as if it had reference to cattle generally, or to cattle of a kind‡ described in the notification, instead of to pigs only, or as if the words "fifty rupees" were substituted for the words "ten rupees," or as if there were both such reference and such substitution.

† The Local Government may at any time, by notification in the official Gazette, cancel or vary a notification under this section.

* "Public road" here includes a railway.—See Act IX. of 1890, s. 125 (4).

† To s. 26, the last two paragraphs have been added by Act I. of 1891, s. 8.

‡ For notification—

- (1) as to elephants and buffaloes issued by the Chief Commissioner, Assam, see Assam Rules Manual, Ed. 1893, p. 25 ;
- (2) as to Bombay, see note (*) (a) on p. 6, *supra*. The notifications there referred to were also issued under the power conferred by this section ;
- (3) as to certain areas in the Central Provinces, see Central Provinces List of Local Rules and Orders, Ed. 1896, p. 18 ;
- (4) as to certain areas in the Presidency of Madras, see Madras List of Local Rules and Orders, Vol. I., Ed. 1898, p. 22 ;
- (5) as to certain areas in the North-Western Provinces, see the North-Western Provinces List of Local Rules and Orders Ed. 1894, p. 41 ;
- (6) as to Bengal, see *Calcutta Gazette*, 1898, Pt. I., p. 890 ;
- (7) as to Cantonment of Nasirabad (Ajmere-Merwara), see *Gazette of India*, 1898, Pt. II., p. 935.

27. Any pound-keeper releasing or purchasing or delivering cattle contrary to the provisions of section 19, or omitting to provide any impounded cattle with sufficient food and water, or failing to perform any of the other duties imposed upon him by this Act, shall, over and above any other penalty to which he may be liable, be punished, on conviction before a Magistrate, with fine not exceeding fifty rupees.

Such fines may be recovered by deductions from the pound-keeper's salary.

28. All fines recovered under section 25, section 26, or section 27, may be appropriated in whole or in part as compensation for loss or damage proved to the satisfaction of the convicting Magistrate.

CHAPTER VII.

SUITS FOR COMPENSATION.

29. Nothing herein contained prohibits any person, whose crops or other produce of land have been damaged by trespass of cattle, from suing for compensation in any competent Court.

30. Any compensation paid to such person under this Act by order of the convicting Magistrate shall be set off and deducted from any sum claimed by, or awarded to, him as compensation in such suit.

CHAPTER VIII.*

SUPPLEMENTAL.

Power for Local Government to transfer certain functions to local authority, and direct credit of surplus receipts to local fund.

31. The Local Government may, from time to time, by notification in the official Gazette,—

* Ch. VIII. has been added by Act I. of 1891, s. 9.

(a)* transfer to any local authority,† within any part of the territories under its administration in which this Act is in operation, all or any of the functions of the Local Government or the Magistrate of the District under this Act, within the local area subject to the jurisdiction of the local authority; or

(b)‡ direct that the whole or any part of the surplus accruing in any district under section 18 of this Act shall be placed to the credit of such local fund or funds as may be formed for any local area or local areas comprised in that district,

and may, from time to time, by notification in the official Gazette, cancel or vary any notification under this section.

* For notifications under this clause issued by the—

- (a) Government of Bombay, *see* Bombay List of Local Rules and Orders, Vol. I. Ed. 1896 pp. 85 & 86;
- (b) Chief Commissioner of Burma, *see* *Burma Gazette*, 1896, Pt. I., pp. 19 and 500;
- (c) Chief Commissioner, Central Provinces, *see* Central Provinces List of Local Rules and Orders, Ed. 1896, p. 14;
- (d) Government of Madras, *see* Madras List of Local Rules and Orders, Vol. I. Ed. 1898, pp. 22 & 23.

† For special enactments, *see*, as to the Central Provinces, the Central Provinces Local Self Government Act (I. of 1883), s. 9, cl. (f) and s. 23 (1), cl. (c); as to the North-Western Provinces and Oudh, the North-Western Provinces and Oudh Local Boards Act (XIV. of 1883), s. 24, cl. (f), and s. 38, cl. (c); and as to the Punjab, the Punjab District Boards Act (XX. of 1883), s. 20, cl. (n).

‡ For notifications issued under cl. (b) by the—

- (a) Government of Bombay for certain local areas, *see* Bombay List of Local Rules and Orders, Vol. I., Ed. 1896 pp. 86 and 87;
 - (b) Chief Commissioner of Burma, *see* *Burma Gazette*, 1894, Pt. I., p. 13, and *ibid*, 1896, Pt. I., p. 501.
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SCHEDULE :
REPEAL OF ACTS.
(See section 2.)

Number and year.	Title of Act.
III. of 1857 ...	An Act relating to trespasses by cattle.
V. of 1860 ...	An Act to amend Act III. of 1857 (relating to trespasses by cattle).
XXII. of 1861 ...	An Act to amend Act III. of 1857 (relating to trespasses by cattle).

ACT NO. I. OF 1878 :

The Opium Act, 1878.*

RECEIVED THE G.-G.'S ASSENT ON THE 9TH JANUARY 1878.

An Act to amend the Law relating to Opium.

Preamble. WHEREAS it is expedient to amend the law relating to opium; It is hereby enacted as follows :—

Short title. 1. This Act may be called "The Opium Act, 1878."

Local extent. It shall extend to such local areas† as the Governor-General in Council may, by notification in the *Gazette of India*, from time to time direct ;

* For the Statement of Objects and Reasons, see Gazette of India, 1877, Pt. V., p. 645 ; for Proceedings in Council, see *ibid*, Supplement, pp. 3015 and 3030 : *ibid*, 1878, pp. 53 and 80.

Act I. of 1873 has been declared in force in the Santhal Parganas by the Santhal Parganas Settlement Regulation (III. of 1872), s. 3, as amended by the Santhal Parganas Laws Regulation (III. of 1886), but see now Reg. III. of 1899 ; in British Baluchistan by the Baluchistan Laws Regulation (I. of 1890), s. 3 ; in Angul and the Khondmals by the Angul District Regulation (I. of 1894), s. 3 ; and in Upper Burma (except the Shan States) by Act XIII. of 1898, s. 4.

† Act I. of 1878 has been extended, by notification in the Gazette of India under this section, to the following local areas from the date specified against each :—

- (1) the N.-W. Provinces and Oudh, from 2nd February 1878 (see Gazette of India, 1878, Pt. I., p. 68) ;
- (2) the Bombay Presidency, from 1st April 1878 (see *ib.*, p. 231) ;
- (3) Bengal, from 21st August 1878 (see *ib.*, p. 526) ;
- (4) Lower Burma from 29th March 1879 (see *ib.*, 1879, Pt. I., p. 75) ;
- (5) Assam, from 1st April 1879 (see *ib.*, p. 259) ;
- (6) the Central Provinces, from 28th June 1879 (see *ib.*, p. 441) ;
- (7) Ajmere-Merwara, from 2nd August 1879 (see *ib.*, p. 466) ;
- (8) the Punjab, from 1st April 1880 (see *ib.*, 1880, Pt. I., p. 16) ;
- (9) the Madras Presidency, from 1st July 1880 (see *ib.*, p. 513) ;
- (10) Coorg, from 1st April 1882 (see *ib.*, 1882, Pt. I. p. 135 ; and
- (11) Upper Burma (except the Shan States), from 15th September 1888 (see *ib.*, 1888, Pt. I. p. 421).—Notifications Nos. 75 and 5052 dated 15th September 1888.

And it shall come into force in each of such areas on such day as the Governor-General in Council, in like manner, directs in this behalf.

Commencement.

2. [*Repeal of certain Acts : Amendment of certain other Acts.*]
Repealed by the Repealing and Amending Act (XII. of 1891) and by the Repealing and Amending Act (IV. of 1894).

3. In this Act, unless there be something repugnant in the subject or context,—

Interpretation-clause.

“Opium” includes also poppy-heads, preparations or admixtures of opium, and intoxicating drugs prepared from the poppy.

“Opium.”

“Magistrate”* means, in the presidency-towns, a Presidency Magistrate, and elsewhere a Magistrate of the first class, or (when specially empowered by the Local Government to try cases under this Act) a Magistrate of the second class :

“Magistrate”

“Import” means to bring into the territories administered by any Local Government from sea, or from foreign territory, or from a territory administered by any other Local Government.

“Import.”

“Export” means to take out of the territories administered by any Local Government to sea, or to any foreign territory, or to any territory administered by another Local Government.

“Export.”

“Transport” means to remove from one place to another within the territories administered by the same Local Government.

“Transport.”

4. Except as permitted by this Act, or by any other enactment relating to opium for the time being in force, or by rules framed under this Act, or under any such enactment, no one shall—

Prohibition of poppy cultivation and possession, &c., of opium.

(a) cultivate the poppy ;

(b) manufacture opium ;

* Cf. definition in the last clause of s. 3 of the Code of Criminal Procedure (Act V. of 1898).

- (c) possess opium ;
- (d) transport opium ;
- (e) import or export opium ; or
- (f) sell opium.

5. The Local Government, with the previous sanction of the Governor-General in Council, may, from time to time, by notification in the local gazette, make rules,* consistent with this Act, to permit, absolutely or subject to the payment of duty, or to any other conditions, and to regulate within the whole or any specified part of the territories administered by such Government, all or any of the following matters:—

- (a) the cultivation of the poppy ;
- (b) the manufacture of opium ;
- (c) the possession of opium ;
- (d) the transport of opium ;
- (e) the importation or exportation of opium ; and
- (f) the sale of opium, and the farm of duties leviable on the sale of opium by retail :

Provided that no duty shall be levied under any such rule on any opium imported, and on which a duty is imposed by or under

* For rules made under this section for—

- (1) Ajmere-Merwara, see Gazette of India, 1898, Pt. II., p. 563 ;
- (2) Assam, see Notification No. 3-R., dated 23rd January 1879, Assam Excise Manual.
- (3) British Baluchistan, see Gazette of India, 1898, Pt. II., p. 124 ;
- (4) Bengal, see Calcutta Gazette, 1898, Pt. I p. 195 ;
- (5) Bombay, see Bombay List of Local Rules and Orders, pp. li to liii, Vol. I., Ed. 1896, and Bombay Government Gazette, 1867, Pt. I., p. 1084 ;
- (6) Burma, see Burma Excise Manual, Ed. 1895 ;
- (7) The Central Provinces, see Central Province Gazette, 1898, Pt. III., p. 86 ;
- (8) Coorg, see Coorg District Gazette, Extraordinary, dated 15th February 1898, p. 2 ;
- (9) Madras, see Madras List of Local Rules and Orders, Vol. I., Ed. 1898, p. 180 ;
- (10) The North-Western Provinces and Oudh, see North-Western Provinces and Oudh Gazette, 1898, Pt. I., p. 562.

the law relating to sea-customs* for the time being in force, or under section 6.

6. The Governor-General in Council may, from time to time, impose such duty as he thinks fit on opium or on any kind of opium imported by land into British India, or into any specified part thereof, and may alter or abolish any duty so imposed.

Warehousing opium.

7. The Governor-General in Council may, by order notified in the *Gazette of India*,—

(a) authorize any Local Government to establish warehouses† for opium legally imported into, or intended to be exported from, the territories administered by such Local Government, and

(b) cancel any such order.

So long as such order remains in force, the Local Government may, by notification published in the official Gazette,—

(c) declare any place to be a warehouse for all or any opium legally imported, whether before or after the payment of any duty leviable thereon, into the territories administered by such Government, or into any specified part thereof, or intended to be exported thence, and

(d) cancel any such declaration.

An order under clause (b) shall cancel all previous declarations under clause (c) of this section relating to places in the territories to which such order refers.

So long as such declaration remains in force, the owner of all such opium shall be bound to deposit it in such warehouse.

8. The Local Government, with the previous sanction of the Governor-General in Council, may, from time to time, by notification in the local Gazette, make rules, consistent with this Act, to regulate the safe custody of opium warehoused under section 7; the levy of fees for

* See the Sea Customs Act (VIII. of 1878), Ch. VIII.

† For notifications issued under s. 6, see *Gazette of India*, Pt. I., 1894, p. 657; 1895, p. 834; and 1896, pp. 146 and 570.

‡ For notification authorizing the Government of Bombay to establish a warehouse under this section, see *List of Bombay Local Rules and Orders*. Vol. I., Ed. 1896, p. lvi.

such warehousing ; the removal of such opium for sale or exportation ; and the manner in which it shall be disposed of if any duty or fees leviable on it be not paid within twelve months from the date of warehousing the same.

9. Any person who, in contravention of this Act, or of rules made and notified under section 5 or section 8.—
 Penalty for illegal cultivation of poppy, &c.

- (a) cultivates the poppy, or
- (b) manufactures opium, or
- (c) possesses opium, or
- (d) transports opium, or
- (e) imports or exports opium, or
- (f) sells opium, or

(g) omits to warehouse opium, or removes or does any act in respect of warehoused opium,

and any person who otherwise contravenes any such rule,

shall, on conviction before a Magistrate, be punished, for each such offence, with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both ;

and, where a fine is imposed, the convicting Magistrate shall direct the offender to be imprisoned in default of payment of the fine for a term which may extend to six months, and such imprisonment shall be in excess of any other imprisonment to which he may have been sentenced.

10. In prosecutions under section 9, it shall be presumed, until the contrary is proved, that all opium for which the accused person is unable to account satisfactorily is opium in respect of which he has committed an offence under this Act.

11. In any case in which an offence under section 9 has been committed —
 Confiscation of opium.

- (a) the poppy so cultivated ;
- (b) the opium in respect of which any offence under the same section has been committed ;
- (c) where, in the case of an offence under clause (d) or (e) of the same section, the offender is transporting, importing, or

exporting any opium exceeding the quantity (if any) which he is permitted to transport, import, or export, as the case may be, the whole of the opium which he is transporting, importing, or exporting ;

(d) where, in the case of an offence under clause (f) of the same section, the offender has in his possession any opium other than the opium in respect of which the offence has been committed, the whole of such other opium,

shall be liable to confiscation.

The vessels, packages, and coverings in which any opium liable to confiscation under this section is found, and the other contents (if any) of the vessel or package in which such opium may be concealed, and the animals and conveyances used in carrying it, shall likewise be liable to confiscation.

12. When the offender is convicted, or when the person

Order of confiscation by charged with an offence in respect of any whom to be made. opium is acquitted, but the Magistrate decides that the opium is liable to confiscation, such confiscation may be ordered by the Magistrate.

Whenever confiscation is authorized by this Act, the officer ordering it may give the owner of the thing liable to be confiscated an option to pay, in lieu of confiscation, such fine as the officer thinks fit.

When an offence against this Act has been committed, but the offender is not known or cannot be found, or when opium not in the possession of any person cannot be satisfactorily accounted for, the case shall be enquired into and determined by the Collector of the District or Deputy Commissioner, or by any other officer authorized by the Local Government in this behalf, either personally, or in right of his office, who may order such confiscation : Provided that no such order shall be made until the expiration of one month from the date of seizing the things intended to be confiscated, or without hearing the persons (if any) claiming any right thereto, and the evidence (if any) which they produce in support of their claims.

13. The Local Government may, with the previous sanction

Power to make rules re- of the Governor-General in Council, garding— from time to time, by notification in the local Gazette, make rules* consistent with this Act to regulate—

* See List of Rules noted under s. 5, *supra*, p. 3 which were made also under the powers conferred by this section.

disposal of things confiscated,

(a) the disposal of all things confiscated under this Act ; and

(b) the rewards to be paid to officers and informers out of the proceeds of fines and confiscations and rewards.

under this Act.

14. Any officer of any of the departments of Excise, Police, Customs, Salt, Opium, or Revenue, superior in rank to a peon or constable, who may, in right of his office, be authorized by the Local Government in this behalf, and who has reason to believe, from personal knowledge, or from information given by any person, and taken down in writing, that opium liable to confiscation under this Act is manufactured, kept, or concealed in any building, vessel, or enclosed place, may, between sunrise and sunset,—

(a) enter into any such building, vessel, or place ;

(b) in case of resistance, break open any door, and remove any other obstacle to such entry ;

(c) seize such opium and all materials used in the manufacture thereof, and any other thing which he has reason to believe to be liable to confiscation under section 11 or any other law for the time being in force relating to opium ; and

(d) detain and search, and, if he think proper, arrest any person whom he has reason to believe to be guilty of any offence relating to such opium under this or any other law for the time being in force.

Power to seize opium in open places.

15. Any officer of any of the said departments may—

(a) seize, in any open place or in transit, any opium or other thing, which he has reason to believe to be liable to confiscation under section 11 or any other law for the time being in force relating to opium,

(b) detain and search any person whom he has reason to believe to be guilty of any offence against this or any other such law, and, if such person has opium in his possession, arrest him and any other persons in his company.

Power to detain, search, and arrest.

16. All searches under section 14 or section 15 shall be made in accordance with the provisions of the Code of Criminal Procedure.*
 Searches how made.

17. The officers of the several departments mentioned in section 14 shall, upon notice given or request made, be legally bound to assist each other in carrying out the provisions of this Act.
 Officers to assist each other.

18. Any officer of any of the said departments, who, without reasonable ground of suspicion, enters or searches, or causes to be entered or searched, any building, vessel, or place,
 Vexatious entries, searches, seizures, and arrests.

or vexatiously and unnecessarily seizes the property of any person on the pretence of seizing or searching for any opium or other thing liable to confiscation under this Act,

or vexatiously and unnecessarily detains, searches, or arrests any person,

shall, for every such offence, be punished with fine not exceeding five hundred rupees.

19. The Collector of the District, Deputy Commissioner, or other officer authorized by the Local Government in this behalf, either personally or in right of his office, or a Magistrate, may issue his warrant for the arrest of any person whom he has reason to believe to have committed an offence relating to opium, or for the search, whether by day or night, of any building or vessel or place in which he has reason to believe opium liable to confiscation to be kept or concealed.
 Issue of warrants.

All warrants issued under this section shall be executed in accordance with the provisions of the Code of Criminal Procedure.*

20. Every person arrested, and thing seized, under section 14 or section 15, shall be forwarded without delay to the officer in charge of the nearest police-section; and every person arrested and thing seized under section 19 shall be forwarded without delay to the officer by whom the warrant was issued.
 Disposal of person arrested or thing seized.

* See now the Code of Criminal Procedure (Act V. of 1898).

Every officer to whom any person or thing is forwarded under this section shall, with all convenient despatch, take such measures as may be necessary for the disposal, according to law, of such person or thing.

21. Whenever any officer makes any arrest or seizure under this Act, he shall, within forty-eight hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure, to his immediate official superior.

22. In the case of alleged illegal cultivation of the poppy, the crop shall not be removed, but shall, pending the disposal of the case, be attached by an officer superior in rank to a peon or constable, who may, in right of his office, be authorized by the Local Government in this behalf; and such officer shall require the cultivator to give bail in a reasonable amount (to be fixed by such officer) for his appearance before the Magistrate, by whom the case is to be disposed of, and such cultivator shall not be arrested unless within a reasonable time he fails to give such bail:

Provided that, wherever Act No. XIII. of 1857 (*An Act to consolidate and amend the Law relating to the Cultivation of the Poppy and the Manufacture of Opium in the Presidency of Fort William in Bengal*), or any part thereof, is in force, nothing in this section shall apply to such cultivation.

Recovery of arrears of fees, duties, &c.

23. Any arrear of any fee or duty imposed under this Act or any rule made hereunder,

and any arrear due from any farmer of opium-revenue,

may be recovered from the person primarily liable to pay the same to the Government, or from his surety (if any) as if it were an arrear of land-revenue.

24. When any amount is due to a farmer of opium-revenue from his licensee in respect of a license, such farmer may make an application to the Collector of the district, Deputy Commissioner, or other officer authorized by the Local Government in this behalf, praying such officer to recover such amount on behalf of the applicant; and, on receiving such application, such Collector, Deputy Commissioner, or other

officer, may, in his discretion, recover such amount as if it were an arrear of land-revenue,* and shall pay any amount so recovered to the applicant :

Provided that the execution of any process issued by such Collector, Deputy Commissioner,† or other officer for the recovery of such amount, shall be stayed if the licensee institutes a suit in the Civil Court to try the demand of the farmer, and furnishes security to the satisfaction of such officer for the payment of the amount which such Court may adjudge to be due from him to such farmer :

Provided, also, that nothing contained in this section, or done thereunder shall affect the right of any farmer of opium-revenue to recover, by suit in the Civil Court or otherwise, any amount due to him from such licensee.

25. When any person, in compliance with any rule made hereunder, gives a bond for the performance of any duty or act, such duty or act shall be deemed to be a public duty, or an act in which the public are interested, as the case may be, within the meaning of the Indian Contract Act, 1872, section 74 ; and, upon breach of the condition of such bond by him, the whole sum named therein as the amount to be paid in case of such breach may be recovered from him as if it were an arrear of land-revenue.*

SCHEDULE.

ENACTMENT REPEALED.

[Repealed by the Repealing and Amending Act (XII. of 1891).]

* See the Revenue Recovery Act (I. of 1890).

† The words " Deputy Commissioner " have been substituted for the words " Deputy Collector " by the Repealing and Amending Act (XII. of 1891), Sch. II.

THE POLICE ACT (NO. V.), 1861.

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THE POLICE ACT (NO. V.), 1861.*

(RECEIVED THE G. G.'s ASSENT ON THE 22ND MARCH 1861.)

An Act for the Regulation of Police.

[As amended up to Act I. of 1903.]

WHEREAS it is expedient to re-organize the police, and
to make it a more efficient instrument
Preamble. for the prevention and detection of
crime ; It is enacted as follows :—

* This short title has been given to Act V. of 1861 by the Indian Short Titles Act (XIV. of 1897).

Act IV. of 1861 has been applied to—

Upper Burma generally (except the Shan States) by the Upper Burma Laws Act (XX. of 1886), s. 6. As to its extension to Upper Burma as amended by subsequent enactments under s. 46, see notes to that section, *infra*, p. 24. It has been extended to the Shan States except Khamti Long and Mong Mit, by the Shan States Laws and Criminal Justice Order, 1895 (see *Burma Gazette*, 1895 and 1896, Pt. I., pp. 262, 542, and 128, respectively). The enactments in force in Upper Burma, except those in Mandalay only, and therefore this Act have been extended to the State of Mong Mit (Momeik) with its dependency Mong Lang (see *Burma Gazette*, 1896, Pt. I., p. 252 ;

to the Santhal Parganas by the Santhal Parganas Settlement Regulation (III. of 1872), s. 3, as amended by the Santhal Parganas Laws Regulation (III. of 1886) ;

to the Arakan Hill District by the Arakan Hill District Laws Regulation (IX. of 1874), s. 3 ;

to British Baluchistan by the British Baluchistan Laws Regulation (I. of 1890), s. 3 ;

to Angul and the Khondmals by the Angul District Regulation (I. of 1894), s. 3.

As to application of the Act to the districts of Peshawar, Kohat, Hazara, Bannu, Dera Ismail Khan, and Dera Ghazi Khan, see s. 49 of the Punjab Frontier Crimes Regulation (IV. of 1887).

The Act has been declared, by notification under s. 3 (a) of the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts, namely, the Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the

1. The following words and expressions in this Act shall have the meaning assigned to them
 Interpretation-clause. unless there be something in the subject or context repugnant to such construction, that is to say:—

The words “Magistrate of the district” shall mean the chief officer charged with the executive administration of a district, and exercising the powers of a Magistrate, by whatever designation the chief officer charged with such executive administration is styled:

The word “Magistrate” shall include all persons within the general police-district exercising all or any of the powers of a Magistrate:

The word “police” shall include all persons who shall be enrolled under this Act:

The words “general police-district” shall embrace any presidency, province, or place, or any part of any presidency, province, or place in which this Act shall be ordered to take effect:*

District of Singbhum (see *Gazette of India*, 1881, Pt. I., p. 504); the Porahat Estate in the Singbhum District (see *Gazette of India*, 1897, Pt. I., p. 1059).

It has been extended, by notification under s. 5 of the same Act, to the Kumaon and Garhwal Districts (see *Gazette of India*, 1891, Pt. I., p. 185); and (with the exception of ss. 1, 3, 5, 6, 8, 11, 21, 28, 33, 41, 43, 46, and 47) to the Scheduled District of Coorg (see *Gazette of India*, 1888, Pt. I., pp. 88 and 323).

It has been applied to the Baluchistan Agency Territories by the Baluchistan Agency Territories Laws Law, 1900.

As to special enactments in force in Madras, Bombay, and the Lower Provinces of Bengal, and extensions of the Act under the power conferred by s. 46, see notes to that section.

As to special enactments for Military, Frontier, or Rural Police in force in certain parts of British India, see note to s. 8.

As to the relaxation of the provisions of the Police Act (V. of 1861), which restrict the employment of police-officers to the presidency, province, or place, of the police-establishment of which they are members, see the Police Act (III. of 1888), *infra*, p. 28.

Compare also s. 3 (2) of the new Code of Criminal Procedure (Act V. of 1898).

* Under s. 2 of the Police Act (III. of 1888), the Governor-General in Council, notwithstanding this provision, may create a general police-district consisting of parts of two or more presidencies, provinces, or places.

The words "District Superintendent" * and "District Superintendent of Police" shall include any Assistant District Superintendent or other person appointed by general or special order of the the Local Government to perform all or any of the duties of a District Superintendent of Police under this Act in any district :

The word "property" shall include any moveable property, money, or valuable security :

Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number :

Words importing the masculine gender shall include females :

The word "person" shall include a Company or Corporation :

The word "month" shall mean a calendar month :

The word "cattle" shall, besides horned cattle, include elephants, camels, horses, asses, mules, sheep, goats, and swine.†

2.‡ The entire police-establishment under a Local Government shall, for the purposes of this Act, be deemed to be one police-force§ and shall be formally enrolled; and shall consist of such number of officers and men, and shall be constituted in such manner, and the members of such force shall receive such pay, as shall, from time to time, be ordered by the Local Government, subject to the sanction of the Governor-General of India in Council.

3. The superintendence of the police throughout a general Superintendence in the police-district shall vest in, and, subject to the general control of the Governor-General of India in Council, shall be exercised by, the Local Government.

* This definition of "District Superintendent" and "District Superintendent of Police" has been inserted by the Police Act (1851) Amendment Act (VIII. of 1895), s. 1.

† Compare the definition of "Cattle" in s. 3 of the Cattle Trespass Act (I. of 1871).

‡ S. 2, so far as it relates to the provinces under the administration of the Lieutenant-Governor of Bengal, has been repealed by the Bengal Police Act (VII. of 1869).

§ The police-force employed in cantonments is part of the general police-force under the Local Government.—See the Cantonments Act (XIII. of 1889), s. 12.

Government* to which [such district is subordinate; and, except as authorized under the provisions of this Act, no person, officer, or Court shall be empowered by the Local Government to appoint, supersede, or control any police-functionary.

4. The administration of the police throughout a general police-district shall be vested in an officer to be styled the Inspector-General of Police, and in such Deputy Inspectors-General and Assistant Inspectors-General as to the Local Government shall seem fit.†

The administration of the police throughout the local jurisdiction of the Magistrate‡ of the district shall, under the general control and direction of such Magistrate, be vested in a District Superintendent and such Assistant District Superintendents as the Local Government shall consider necessary.

The Inspector-General and other officers above mentioned shall, from time to time, be appointed by the Local Government, and may be removed by the same authority.

5. The Inspector-General of Police shall have the full powers of a Magistrate throughout the general police-district; but shall exercise those powers subject to such limitation as may, from time to time, be imposed by the Local Government.

6. [*Magisterial powers of police-officers.*] *Repealed by the Code of Criminal Procedure (Act X. of 1882).*

* Under s. 1 of the Chief Commissioner's Powers Act (XXXII. of 1867), the powers of a Local Government under the Police Act (V. of 1861) have been delegated to the Chief Commissioners of Oudh, the Central Provinces, and British (now Lower) Burma.—See *Gazette of India*, 1868, p. 358, and 1869, p. 18.

As to Assam, see Notification No. 313, dated 12th September 1894, set out at p. 3 of the Assam Manual of Local Rules and Orders, Ed. 1893.

† In the town of Calcutta, the administration of the police vests in the "Commissioner of Police" [see s. 4 of Bengal Act IV. of 1866 (Calcutta Police)], and, in the suburbs, the Inspector-General of Police for Bengal is precluded from exercising any of the powers and authorities vested in him by this Act.—See s. 9 of Bengal Act IV. of 1884 (Howrah and Suburban Municipal Police).

‡ For rules and orders regarding powers of Magistrates and Commissioners in the North-Western Provinces and Oudh, see the North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894. See also the Police Manual, s. 11.

7.* The appointment of all police-officers other than those mentioned in section 4 of this Act shall, Appointment, dismissal, &c., of inferior officers. under such rules† as the Local Government shall, from time to time, sanction, rest with the Inspector-General, Deputy Inspectors-General, Assistant Inspectors-General, and District Superintendents of Police, who may, under such rules as aforesaid, at any time dismiss suspend, or reduce any police-officer whom they shall think remiss or negligent in the discharge of his duty, or unfit for the same ;

“or may award any one or more of the following punishments to any police-officer who shall discharge his duty in a careless or negligent manner, or who, by any act of his own, shall render himself unfit for the discharge thereof, namely—

- (a) fine to any amount not exceeding one month's pay ;
- (b) confinement to quarters for a term not exceeding fifteen days, with or without punishment drill, extra guard, fatigue, or other duty ;
- (c) deprivation of good-conduct pay ;
- (d) removal from any office of distinction or special emolument.”‡

8. Every police-officer so appointed shall receive, on his appointment, a certificate in the form of Certificates to police-officers. annexed to this Act, under the seal of the Inspector-General or such other officer as the Inspector-General shall appoint, by virtue of which the person holding such certificate

* A person appointed to the Burma police-force under this section is a military police-officer within the meaning of the Burma Military Police Act (XV. of 1887).—See s. 3 (1) of that Act.

As to the disciplinary powers of a Commandant or Second-in-Command of Military Police in Burma over Police-officers appointed under this section, see s. 12, *ibid.*

† For rules regarding the police-force in the Central Provinces, see Notification No. 3595, Central Provinces List of Local Rules and Orders, Ed. 1896. See also the Police Manual, Vol. I.

For rules and orders regarding powers of Commissioners and Magistrates in the North-Western Provinces and Oudh, see North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894. See also the Police Manual, s. 11.

‡ In s. 7, the portion quoted has been substituted for the words “or fine any police-officer to any amount not exceeding one month's pay who shall discharge his duty in a careless or negligent manner, or who, by any act of his own, shall render himself unfit for the discharge thereof,” by the Police Act (1861) Amendment Act (VIII. of 1895), s. 2.

shall be vested with the powers, functions, and privileges of a police-officer.*

“Such certificate shall cease to have effect whenever the person named in it ceases for any reason to be a police-officer, and, on his ceasing to be such an officer, shall be forthwith surrendered by him to any officer empowered to receive the same.

“A police-officer shall not, by reason of being suspended from office, cease to be a police-officer. During the term of such suspension, the powers, functions, and privileges vested in him as a police-officer shall be in abeyance; but he shall continue subject to the same responsibilities, discipline, and penalties, and to the same authorities, as if he had not been suspended.”†

9. No police-officer shall be at liberty to withdraw himself from the duties of his office unless expressly allowed to do so by the District Superintendent, or by some other officer authorized to grant such permission, or, without leave of

* As to enrolment, maintenance, and discipline of—

(1) the Military Police-force employed in—

(a) the Andaman and Nicobar Islands, *see* the Andaman and Nicobar Islands Military Police Regulation (II. of 1888);

(b) Assam, *see* the Assam Military Police Regulation (IV. of 1890);

(c) Burma, *see* the Burma Military Police Act (XV. of 1887);

(2) the Chittagong Hill Tracts Frontier Police, *see* the Chittagong Hill Tracts Frontier Police Regulation (III. of 1881)

(3) the Rural Police in the Districts of Cachar and Sylhet, *see* the Sylhet and Cachar Rural Police Regulation (I. of 1883);

(4) the Punjab Frontier Police-officers, *see* the Punjab Frontier Police-officers Regulation (VII. of 1893);

(5) the Calcutta and Suburban Police, *see* Bengal Act IV. of 1866 (Calcutta Police) and Bengal Act II. of 1866 (Calcutta Suburban Police);

(6) the Police-establishment in municipal areas in the North-Western Provinces and Oudh, *see* the N.-W. P. and Oudh Municipalities Act (XV. of 1883), ss. 49 to 53;

(7) the Police-establishment in municipal areas in the Punjab, *see* the Punjab Municipal Act (XX. of 1891), ss. 79 to 84

† In s. 8, the last two paragraphs quoted have been substituted for the original paragraph by the Police Act (1861) Amendment Act (VIII. of 1895), s. 3. That paragraph ran as follows:—

“Such certificate shall cease to have effect whenever the person named in it is suspended or dismissed or otherwise removed from employment in the police-force, and shall be immediately surrendered to the superior

the District Superintendent, to resign his office unless he shall have given to his superior officer notice in writing, for a period of not less than two months, of his intention to resign.

10. No police-officer shall engage in any employment or office whatever other than his duties under this Act unless expressly permitted to do so in writing by the Inspector-General.

11. [*Police Superannuation Fund.*] *Repealed by the Repealing Act (XVI. of 1874).*

12. The Inspector-General of Police may, from time to time, subject to the approval of the Local Government, frame such orders and rules* as he shall deem expedient, relative to the organisation, classification, and distribution of the police-force; the places at which the members of the force shall reside, and the particular services to be performed by them; their inspection, the description of arms, accoutrements, and other necessities to be furnished to them; the collecting and communicating by them of intelligence and information; and all such other orders and rules relative to the police-force as the Inspector-General shall, from time to time, deem expedient for preventing abuse or neglect of duty, and for rendering such force efficient in the discharge of its duties.

13. It shall be lawful for the Inspector-General of Police or any Deputy Inspector-General, or Assistant Inspector-General, or for the District Superintendent, subject to the general direction of the Magistrate of the district, on the application of any person showing the necessity thereof, to depute any additional number of police-officers to keep the peace at any place within the

officer of such person, or to some other officer empowered to receive the same."

* For rules and orders with regard to the organisation, inspection, discipline equipment, allocation, and duties of the Police in the North-Western Provinces and Oudh, *see* the North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, p. 15; *see* also the Police Manual, Ed. 1890, ss. I. to X.

For rules for the administration of the police in Burma, *see* the Burma Rules Manual, Ed. 1897, pp. 10 to 17.

For general rules under this section in the Central Provinces, *see* Notification No. 3525, at p. 4 of the Central Provinces List of Local Rules and Orders, Ed. 1896: *see* also the Police Manual, Vol. I.

general police-district, and for such time as shall be deemed proper. Such force shall be exclusively under the orders of the District Superintendent, and shall be at the charge of the person making the application :

Provided that it shall be lawful for the person on whose application such deputation shall have been made, on giving one month's notice in writing to the Inspector-General, Deputy Inspector-General, or Assistant Inspector-General, or to the District Superintendent, to require that the police-officers so deputed shall be withdrawn ; and such person shall be relieved from the charge of such additional force from the expiration of such notice.

14. Whenever any railway, canal, or other public work, or any manufactory or commercial concern, shall be carried on, or be in operation, in any part of the country, and it shall appear to the Inspector-General that the employment of an additional police-force in such place is rendered necessary by the behaviour, or reasonable apprehension of the behaviour, of the persons employed upon such work, manufactory, or concern, it shall be lawful for the Inspector-General with the consent of the Local Government, to depute such additional force to such place, and to employ the same so long as such necessity shall continue ; and to make orders, from time to time, upon the person having the control or custody of the funds used in carrying on such work, manufactory, or concern, for the payment of the extra force so rendered necessary, and such person shall thereupon cause payment to be made accordingly.

15.* (1) It shall be lawful for the Local Government, by proclamation to be notified in the official gazette, and in such other manner as the Local Government shall direct, to declare that any area subject to its authority has been found to be in a disturbed or dangerous state, or that, from the conduct of the inhabitants of such area, or of any class or section of them, it is expedient to increase the number of police.

(2) It shall thereupon be lawful for the Inspector-General of Police, or other officer authorized by the Local Government in this behalf, with the sanction of the Local Government, to employ any

* This section has been substituted for the original s. 15 by the Police Act (1861) Amendment Act (VIII. of 1895), s. 4.

police-force in addition to the ordinary fixed complement to be quartered in the area specified in such proclamation as aforesaid.

(3) Subject to the provisions of sub-section (5) of this section, the cost of such additional police-force shall be borne by the inhabitants of such area described in the proclamation.

(4) The Magistrate of the district, after such enquiry as he may deem necessary, shall apportion such cost among the inhabitants who are, as aforesaid, liable to bear the same, and who shall not have been exempted under the next succeeding sub section. Such apportionment shall be made according to the Magistrate's judgment of the respective means within such area of such inhabitants.

(5) It shall be lawful for the Local Government, by order, to exempt any persons, or class or section of such inhabitants, from liability to bear any portion of such cost.

(6) Every proclamation issued under sub-section (1) of this section shall state the period for which it is to remain in force; but it may be withdrawn at any time, or continued from time to time for a further period or periods as the Local Government may, in each case, think fit to direct.

Explanation.—For the purposes of this section, “inhabitants” shall include persons who themselves, or by their agents or servants, occupy or hold land or other immoveable property within such area, and landlords who themselves, or by their agents or servants, collect rents direct from raiyats or occupiers in such area, notwithstanding that they do not actually reside therein.

15A.* (1) If, in any area in regard to which any proclamation notified under the last-preceding section is in force, death or grievous hurt, or loss of, or damage to, property, has been caused by, or has ensued from, the misconduct of the inhabitants of such area, or any class or section of them, it shall be lawful for any person, being an inhabitant of such area, who claims to have suffered injury from such misconduct, to make, within one month from the date of the injury, or such shorter period as may be prescribed, an application for compensation to the

* S. 15A has been inserted by the Police Act (1861) Amendment Act (VIII. of 1895), s. 5.

Magistrate of the district, or of the sub-division of a district, within which such area is situated.*

(2) It shall thereupon be lawful for the Magistrate of the district, with the sanction of the Local Government, after such enquiry as he may deem necessary, and whether any additional police-force has or has not been quartered in such area under the last-preceding section, to—

- (a) declare the persons to whom injury has been caused by or has ensued from, such misconduct,
- (b) fix the amount of compensation to be paid to such persons and the manner in which it is to be distributed among them, and
- (c) assess the proportion in which the same shall be paid by the inhabitants of such area other than the applicant who shall not have been exempted from liability to pay under the next-succeeding sub-section :

Provided that the Magistrate shall not make any declaration or assessment under this sub-section unless he is of opinion that such injury as aforesaid has arisen from a riot or unlawful assembly within such area, and that the person who suffered the injury was himself free from blame in respect of the occurrences which led to such injury.

(3) It shall be lawful for the Local Government, by order, to exempt any persons, or class or section of such inhabitants, from liability to pay any portion of such compensation.

(4) Every declaration or assessment made, or order passed, by the Magistrate of the district under sub-section (2) shall be subject to revision by the Commissioner of the Division or the Local Government, but, save as aforesaid, shall be final.

(5) No civil suit shall be maintainable in respect of any injury for which compensation has been awarded under this section.

(6) *Explanation.*—In this section the word “inhabitants” shall have the same meaning as in the last-preceding section.

* As to rules regulating proceedings in Burma under this section, see note (1) to section 46 (2) (b), *infra*, p. 24.

16.* (1) All moneys payable under sections 13, 14, 15, and 15A, shall be recoverable by the Magistrate of the district in the manner provided by sections 386 and 387 of the Code of Criminal Procedure, 1882, for the recovery of fines, or by suit in any competent Court.

Recovery of moneys payable under sections 13, 14, 15, and 15A, and disposal of same when recovered.

(2) All moneys paid or recovered under sections 13, 14, and 15 shall be credited to a fund to be called "The General Police Fund," and shall be applied to the maintenance of the police-force under such orders as the Local Government shall pass.

(3) All moneys paid or recovered under section 15A shall be paid by the Magistrate of the district to the persons to whom, and in the proportions in which, the same are payable under that section.

17. When it shall appear that any unlawful assembly or riot, or disturbance of the peace, has taken place, or may be reasonably apprehended, and that the police-force ordinarily employed for preserving the peace is not sufficient for its preservation, and for the protection of the inhabitants, and the security of property in the place where such unlawful assembly or riot, or disturbance of the peace, has occurred, or is apprehended, it shall be lawful for any police-officer, not below the rank of inspector, to apply to the nearest Magistrate to appoint so many of the residents of the neighbourhood, as such police-officer may require, to act as special police-officers, for such time and within such limits as he shall deem necessary; and the Magistrate to whom such application is made shall, unless he see cause to the contrary, comply with the application.

Special police-officers.

18. Every special police-officer so appointed shall have the same powers, privileges, and protection, and shall be liable to perform the same duties, and shall be amenable to the same penalties, and be subordinate to the same authorities, as the ordinary officers of police.

Powers of special police-officers.

19. If any person, being appointed a special police-officer as aforesaid, shall, without sufficient excuse, neglect or refuse to serve as such, or to obey such lawful order or direction as may be given to him for the performance of his duties, he shall be liable, upon conviction before

Refusal to serve as special police-officers.

* This section has been substituted for the original s. 16 by the Police Act (1861) Amendment Act (VIII. of 1895), s. 6.

a Magistrate, to a fine not exceeding fifty rupees for every such neglect, refusal, or disobedience.

20.* Police-officers enrolled under this Act shall not exercise Authority to be exercised any authority except the authority provided for a police-officer under this Act and any Act which shall hereafter be passed for regulating criminal procedure.†

21. Nothing in this Act shall affect any hereditary or other Village police-officers. village police-officer unless such officer shall be enrolled as a police-officer under this Act. When so enrolled, such officer shall be bound by the provisions of the last-preceding section. No hereditary or other village police-officer shall be enrolled without his consent and the consent of those who have the right of nomination.

If any police-officer appointed under Act XX. of 1856 Police chaukidars in the (to make better provision for the appointment and maintenance of police chaukidars in Cities, Towns, Stations, Suburbs, and Bazzars in the Presidency of Fort William in Bengal) is employed out of the district for which he shall have been appointed under that Act, he shall not be paid out of the rates levied under the said Act for that district.

22. Every police-officer shall, for all purposes in this Act Police-officers always on duty, and may be employed in any part of district. contained, be considered to be always on duty, and may at any time be employed as a police-officer in any part of the general police-district.

23. It shall be the duty of every police-officer promptly to obey and execute all orders and warrants lawfully issued to him by any competent authority; to collect and communicate intelligence affecting the public peace; to prevent the commission of offences and public

* For some cases in which the application of s. 20 has been restricted, see the Assam Police-officers Regulation (II. of 1883), ss. 2 and 3; the Burma Military Police Act (XV. of 1887), s. 11; and the Lower Burma Courts Act (VI. of 1900).

The section has been declared not to apply to any Assistant District Superintendent of Police whose duties are exercised in connection with the unenrolled border police-force.—See s. 2 of the Punjab Frontier Police-officers Regulation (VII. of 1893), *Gazette of India*, 1893, Pt. I., p. 285.

† See now Act V. of 1898.

nuisances; to detect and bring offenders to justice, and to apprehend all persons whom he is legally authorized to apprehend, and for whose apprehension sufficient ground exists; and it shall be lawful for every police-officer, for any of the purposes mentioned in this section, without a warrant, to enter and inspect any drinking shop, gaming-house, or other place of resort of loose and disorderly characters.

24. It shall be lawful for any police-officer to lay any information before a Magistrate, and to apply for a summons, warrant, search-warrant, or such other legal process as may by law issue against any person committing an offence.*

Police-officers to take charge of unclaimed property, and be subject to Magistrate's orders as to disposal.

25. It shall be the duty of every police-officer to take charge of all unclaimed property, and to furnish an inventory thereof to the Magistrate of the district.

The police-officers shall be guided as to the disposal of such property by such orders as they shall receive from the Magistrate of the district.

26. (1) The Magistrate of the district may detain the property, and issue a proclamation, specifying the articles of which it consists, and requiring any person who has any claim thereto to appear and establish his right to the same within six months from the date of such proclamation.

(2)† The provisions of section 525 of the Code of Criminal Procedure, 1882, shall be applicable to property referred to in this section.

27 ‡ (1) If no person shall, within the period allowed, claim such property or the proceeds thereof, if sold, it may, if not already sold under

* Here the words, "and to prosecute such person up to final judgment," have been omitted, being repealed by the Code of Criminal Procedure (Act X. of 1852).

† This sub-section has been added by the Police Act (1861) Amendment Act (VIII of 1895), s. 7. Read now the Code of Criminal Procedure (Act V. of 1898).

‡ This section has been substituted for the original section by the Police Act (1861) Amendment Act (VIII. of 1895), s. 8. That section ran as follows:—

sub-section (2) of the last-preceding section, be sold under the orders of the Magistrate of the district.

(2) The sale-proceeds of property sold under the preceding sub-section and the proceeds of property sold under section 26, to which no claim has been established, shall be at the disposal of Government.

28. Every person having ceased to be an enrolled police-officer under this Act who shall not up certificate, &c., on ceasing to be police-officers. Persons refusing to deliver forthwith deliver up his certificate, and the clothing, accoutrements, appointments, and other necessities which shall have been supplied to him for the execution of his duty, shall be liable, on conviction before a Magistrate, to a penalty not exceeding two hundred rupees, or to imprisonment, with or without hard labour, for a period not exceeding six months, or to both.

29. Every police-officer who shall be guilty of any violation of duty, or wilful breach or neglect of any rule or regulation, or lawful order made by competent authority, or who shall withdraw from the duties of his office without permission, or without having given previous notice for the period of two months, "or who being absent on leave, shall fail, without reasonable cause, to report himself for duty on the expiration of such leave,"* or who shall engage, without authority, in any employment other than his police-duty, or who shall be guilty of cowardice; or who shall offer any unwarrantable personal violence to any person in his custody, shall be liable, on conviction before a Magistrate, to a penalty not exceeding three months' pay, or to imprisonment, with or without hard labour, for a period not exceeding three months, or to both.

30.† (1) The District Superintendent or Assistant District Superintendent of Police may, as occasion requires, direct the conduct of all assemblies and processions on the public Regulation of public assemblies and processions and licensing of same.

"If no person shall, within the period allowed, claim such property, it may be sold under the orders of the Magistrate of the District, and the proceeds shall be at the disposal of Government."

* To s. 29, the words quoted have been added by the Police Act (1861) Amendment Act (VIII. of 1895), s. 9.

† This section has been substituted for the original by the Police Act (1861) Amendment Act (VIII. of 1895), s. 10. The original section ran as follows :—

roads, or in the public streets or thoroughfares, and prescribe the routes by which, and the times at which, such processions may pass.

(2) He may also, on being satisfied that it is intended by any persons or class of persons to convene or collect an assembly in any such road, street, or thoroughfare, or to form a procession which would, in the judgment of the Magistrate of the district, or of the subdivision of a district, if uncontrolled, be likely to cause a breach of the peace, require, by general or special notice, that the persons convening or collecting such assembly, or directing or promoting such procession, shall apply for a license.

(3) On such application being made, he may issue a license specifying the names of the licensees, and defining the conditions on which alone such assembly or such procession is to be permitted to take place, and otherwise giving effect to the section :

Provided that no fee shall be charged on the application for, or grant of, any such license.

(4) He may also regulate the extent to which music may be used in the streets on the occasion of festivals and ceremonies.

30A.* (1) Any Magistrate or District Superintendent of Police, or Assistant District Superintendent of Police, or Inspector of Police, or any police-officer in charge of a station, may stop any procession which violates the conditions of a license granted under the last-foregoing section, and may order it or any assembly which violates any such conditions as aforesaid to disperse.

Powers with regard to assemblies and processions violating conditions of license.

(2) Any procession or assembly which neglects or refuses to obey any order given under the last-preceding sub-section shall be deemed to be an unlawful assembly.

"The District Superintendent and Assistant District Superintendent of Police may, as occasion requires, direct the conduct of all assemblies and processions on the public roads, or in the public streets or thoroughfares, and prescribe the routes by which, and the times at which, such processions may pass.

"They may also regulate the use of music in the streets on the occasion of festivals and ceremonies,"

* S. 30A has been inserted by the Police Act (1861) Amendment Act (VIII. of 1895), s. 11.

31. It shall be the duty of the police to keep order on the Police to keep order in public roads, and in the public streets, public roads, &c. thoroughfares, ghats, and landing places, and at all other places of public resort, and to prevent obstructions on the occasions of assemblies and processions on the public roads, and in the public streets, or in the neighbourhood of places of worship during the time of public worship, and in any case when any road, street, thoroughfare, ghat, or landing place may be thronged, or may be liable to be obstructed.

32 Every person opposing or not obeying the orders issued under the last three* preceding sections, Penalty for disobeying orders issued under last three sections, &c. or violating the conditions of any license granted by the District Superintendent or Assistant District Superintendent of Police for the use of music, or for the conduct of assemblies and processions, shall be liable, on conviction before a Magistrate, to a fine not exceeding two hundred rupees.

33. Nothing in the last four† preceding sections shall be Saving of control of Magistrate of district. deemed to interfere with the general control of the Magistrate of the district over the matters referred to therein.

34. Any person who, on any road, or in any "open place Punishment for certain offence on roads, &c. or"‡ street or thoroughfare, within the limits of any town§ to which this section shall be specially extended|| by the Local Government, commits

* "Three" has been substituted for "two" by the Police Act (1861) Amendment Act (VIII. of 1895), s. 12.

† "Four" has been substituted for "three" by the Police Act (1861) Amendment Act (VIII. of 1895), s. 12.

‡ In s. 34, the words quoted have been inserted by the Police Act (1861) Amendment Act (VIII. of 1895), s. 13.

§ "Town" here includes a cantonment.—See the Cantonments Act (XIII. of 1889), s. 12 (2).

|| For list of the towns to which this section has been specially extended in—

- (1) Assam, *see* the Assam Manual of Local Rules and Orders, Ed. 1893, pp. v. to vii.;
- (2) Burma, *see* Appendix A to the Burma Laws List, Ed. 1897;
- (3) Central Provinces, *see* the Central Provinces List of Local Rules and Orders, Ed. 1896 p. 10;
- (4) North-Western Provinces and Oudh, *see* the North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, pp. 16 to 31;

any of the following offences to the obstruction, inconvenience, annoyance, risk, danger or damage of the residents *or** passengers, shall, on conviction before a Magistrate, be liable to a fine not exceeding fifty rupees, or to imprisonment, "with or without hard labour," † not exceeding eight days; and it shall be lawful for any

Power of police-officers. police-officer to take into custody, without a warrant, any person who, within his view, commits any of such offences, namely:—

First.—Any person who slaughters any cattle or cleans any carcass; any person who rides or drives any cattle recklessly or furiously, or trains or breaks any horse or other cattle:

Cruelty to animals : *Second.*—Any person who wantonly or cruelly beats, abuses, or tortures any animal :

Third.—Any person who keeps any cattle or conveyance of any kind standing longer than is required for loading or unloading, or for taking up or setting down passengers, or who leaves any conveyance in such a manner as to cause inconvenience or danger to the public:

Exposing goods for sale : *Fourth.*—Any person who exposes any goods for sale :

Fifth.—Any person who throws or lays down any dirt, filth, rubbish, or any stones or building materials; or who constructs any cowshed, stable, or the like; or who causes any offensive matter to run from any house, factory, dung-heap, or the like:

Sixth.—Any person who is found drunk or riotous, or who is incapable of taking care of himself:

Being found drunk or riotous :

For an instance of the extension of the section to a town in (5) Bengal, see Notification No. 1077-J. D., dated 10th October 1897, *Calcutta Gazette*, 1897, Pt. I., p. 1321. It was extended to the towns of Ajmere and Beawar by Notification No. 426 A, dated 26th April 1865.—See *N.-W. P. Gazette*, 1865, p. 207.

In the Presidencies of Madras and Bombay, there are separate Acts.—
See note to s. 46.

* In s. 34, the italicized word '*or*' has been substituted for the word "and" by the Police Act (1861) Amendment Act (VIII. of 1895), s. 13.

† These words have been inserted in s. 34 by Act I. of 1903.

Seventh.—Any person who wilfully and indecently exposes his person or any offensive deformity or disease, or commits nuisance by easing himself, or by bathing or washing in any tank or reservoir not being a place set apart for that purpose :

Eighth.—Any person who neglects to fence in, or duly to protect, any well, tank, or other dangerous place or structure.

35.* Any charge against a police-officer above the rank of a constable under this Act shall be enquired into and determined only by an officer exercising the powers of a Magistrate.

36. Nothing contained in this Act shall be construed to prevent any person from being prosecuted under any other Regulation or Act for any offence made punishable by this Act, or from being liable under any other Regulation or Act to any other or higher penalty or punishment than is provided for such offence by this Act :

Provided that no person shall be punished twice for the same offence.

37.† The provisions of sections 64 to 70, both inclusive, of the Indian Penal Code, and of sections 380 to 389, both inclusive, of the Code of Criminal Procedure, 1882,‡ with respect to fines, shall apply to penalties and fines imposed under this Act on conviction before a Magistrate :

Provided that, notwithstanding anything contained in section 65 of the first-mentioned Code, any person sentenced to fine under section 34 of this Act may be imprisoned in default of payment of such fine for any period not exceeding eight days.

* The words, "In all cases of convictions under this Act, the officer trying the case shall be limited to his ordinary jurisdiction as to the amount of fine or imprisonment which he may inflict: Provided that," repealed by the Code of Criminal Procedure (Act X. of 1882), have here been omitted

† This section has been substituted for the original s. 37, and for ss. 38, 39, and 40, by the Police Act (1861) Amendment Act (VIII. of 1895), s. 14.

‡ Act X. of 1882. But *read* now the new Code of Criminal Procedure (Act V. of 1898).

33. [*Procedure until return is made to warrant of distress.*] *Repealed.*—See the Police Act (1861) Amendment Act (VIII. of 1895), s. 14.

39. [*Imprisonment if distress not sufficient.*] *Repealed.*—See the Police Act (1861) Amendment Act (VIII. of 1895), s. 14.

40. [*Levy of fines from European British subjects.*] *Repealed.*—See the Police Act (1861) Amendment Act (VIII. of 1895), s. 14.

41. All sums paid for the service of process by police-officers, Rewards to police and in- and all rewards, forfeitures, and penal-
formers payable to General ties, or shares of rewards, forfeitures,
Police Fund. and penalties, which by law are payable
to informers, shall, when the information is laid by a police-officer,
be paid into the General Police Fund.*

42. *All actions and prosecutions against any person, which*
Limitation of actions. *may be lawfully brought for anything*
done or intended to be done under the
provisions of this Act, or under the general police-powers hereby given,
shall be commenced within three months after the act complained of
shall have been committed, and not otherwise,† and notice in writing
of such action, and of the cause thereof, shall be given to the de-
fendant, or to the District Superintendent or an Assistant District
Superintendent of the district in which the act was committed, one
month at least before the commencement of the action.

No plaintiff shall recover in any such action if tender of
Tender of amends. sufficient amends shall have been made
before such action brought, or if a
sufficient sum of money shall have been paid into Court, after
such action brought, by or on behalf of the defendant; and,
though a decree shall be given for the plaintiff in any such action,
such plaintiff shall not have costs against the defendant unless
the Judge before whom the trial is held shall certify his approbation
of the action :

Provided always that no action shall in any case lie where
Proviso. such officers shall have been prosecuted
criminally for the same act.

* See, as to this fund, s. 16, *supra*.

† So much of s. 42 (*i. e.*, the portion in italics) as relates to the limita-
tion of suits has been repealed by the Indian Limitation Act (IX. of 1871).

43.* When any action or prosecution shall be brought, or any proceedings held, against any police-officer for any act done by him in such capacity, it shall be lawful for him to plead that such act was done by him under the authority of a warrant issued by a Magistrate.

Such plea shall be proved by the production of the warrant directing the act, and purporting to be signed by such Magistrate, and the defendant shall thereupon be entitled to a decree in his favour, notwithstanding any defect of jurisdiction in such Magistrate. No proof of the signature of such Magistrate shall be necessary unless the Court shall see reason to doubt its being genuine :

Provided always that any remedy which the party may have against the authority issuing such warrant shall not be affected by anything contained in this section.

44. It shall be the duty of every officer in charge of a police-station to keep a general diary in such form as shall, from time to time, be prescribed by the Local Government, and to record therein all complaints and charges preferred, the names of all persons arrested, the names of the complainants, the offences charged against them, the weapons or property that shall have been taken from their possession or otherwise, and the names of the witnesses who shall have been examined.

The Magistrate of the district shall be at liberty to call for and inspect such diary.

45. The Local Government may direct the submission of such returns by the Inspector-General and other police-officers as to such Local Government shall seem proper, and may prescribe the form in which such returns shall be made.

* A Commandant or Second-in-command of Military Police in Burma is entitled to the privileges which a police-officer has under sections 42 and 43.—See the Burma Military Police Act (XV. of 1887), s. 13.

46.* (1) This Act shall not by its own operation take effect in any presidency, province, or place.†

Scope of Act. But the Governor-General in Council, by an order to be published in the *Gazette of India*, may extend the whole or any part of this Act to any presidency, province, or place, and the whole or such portion of this Act as shall be specified in such order shall thereupon take effect in such presidency, province, or place.

* This section has been substituted for the original s. 46 by the Police Act (1861) Amendment Act (VIII. of 1895), s. 15. That section was as follows :—

"46. This Act shall not take effect in any presidency, province, or place unless the same shall be extended to such presidency, province, or place by the Governor-General of India in Council by an order to be published in the Government Gazette.

"When the Act shall have been so extended, it shall be carried into effect in such presidency, province, or place as the Local Government, by an order to be published in the official gazette, shall direct."

† In the Madras and Bombay Presidencies, there are special Police Acts—see Act XXIV. of 1859, and Bombay Acts VII. of 1867 and IV. of 1890, and, in the Lower Provinces of Bengal, Bengal Act VII. of 1869 is to be read and taken as part of Act V. of 1861 (see s. 6 of the former Act). But, for the purposes of s. 2 of the Police Act (III. of 1888), and notwithstanding s. 46 of this Act, the Act of 1861 shall be deemed to take effect throughout British India.—See 2 (6) of Act III. of 1888.

For notifications extending this Act under the power conferred by the old section to—

(1) the North-Western Provinces, including Ajmere-Merwara then under that Government, see Notification No. 964 in the *North-Western Provinces Gazette*, 1861, p. 634

[For orders as to enforcement of the Act in 27 districts in the North-Western Provinces, in Hamirpur, Jalaun, Jhansi, Lalitpur, Naini Tal (including the Tarai Parganas), and Almora and Garhwal, issued under the old s. 46, para. 2 (after the Act had been extended under para. 1 of that section to the whole province), see Notifications noted at pp. 31 and 32 of the North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894. These orders are kept in force by s. 16 of Act VIII. of 1895];

(2) Oudh, see Notification No. 34 in the *North-Western Provinces Gazette*, 1861, p. 1758;

(3) tract of land between Allahabad and Jubbulpore ceded in full sovereignty by certain Native States, see Notification No. 205-F., at p. 13 of the Central Provinces List of Local Rules and Orders, Ed. 1896;

(4) Districts in Burma—

(a) Pegu [now the "Pegu and Irrawaddy Divisions," see *Burma Gazette*, 1881, Pt. II., p. 98: Notification No. 946], see Notification No. 1453, *Burma Gazette*, 1861, Pt. I., p. 2340;

(2) When the whole or any part of this Act shall have been so extended, the Local government may, from time to time, by notification in the official gazette, make rules consistent with this Act—

(a) to regulate the procedure to be followed by Magistrates and police-officers in the discharge of any duty imposed upon them by or under this Act;

(b) to prescribe the time, manner, and conditions within and under which claims for compensation under section 15A* are to be made, the particulars to be stated in such claims, the manner in which the same are to be verified, and the proceedings (including local enquiries, if necessary) which are to be taken consequent thereon; and

(c) generally for giving effect to the provisions of this Act

(3) All rules made under this Act may, from time to time, be amended, added to, or cancelled by the Local Government.

(b) { Tenasserim, } see Notification No. 1906, *Burma Gazette*,
 { Martaban, } 1861, Pt. I., p. 3189;

(c) Arakan, see Notification No. 571, *Burma Gazette*, 1864, Pt. I., p. 45;

(5) the Central Provinces—for extensions of the Act to the Provinces of Nagpur, Sironcha, Sambalpur, Nimar, Bijeraghgarh, see List of Local Rules and Orders, Ed. 1896, p. 4;

(6) Bengal and Assam—that is, the Provinces comprised in the Lieutenant-Governorship of Bengal, of which the various districts now forming the Chief Commissionership of Assam then formed part, see Notification No. 1871, set out at p. 3 of the Assam Manual of Local Rules and Orders, Ed. 1893;

(7) several districts in the Punjab, see Notification No. 971, dated 15th May 1861, *Calcutta Gazette*, 18th May 1861, p. 1302.

Under the power conferred by the section as it now stands, it has been extended as follows to—

(1) Upper Burma (except the Shan States), see Notification No. 619, *Burma Gazette*, 1895, Pt. II., p. 265;

(2) Madras—ss. 15, 15A, 16, 30, 30A, 31, and 32 of the Act have been extended to the whole of the Madras Presidency. —See Notification No. 728, dated 31st October 1895, *Gazette of India*, 1895, Pt. I., p. 876;

(3) Eastern Dvars in the District of Goalpara, see Notification No. 230, *Gazette of India*, 1897, Pt. I., p. 198.

For the provinces and districts to which the Act has been extended by special notifications, see note (1) on p. 1., *supra*.

For the proceedings in Burma under s. 15A, see Notification No. 1895, Pt. I., p. 448.

47. It shall be lawful for the Local Government, in carrying Authority of District this Act into effect in any part of the Superintendent of Police territories subject to such Local Government, to declare that any authority over village-police. which now is or may be exercised by the Magistrate of the District over any village-watchman or other village-police-officer, for the purposes of police, shall be exercised, subject to the general control of the Magistrate of the District, by the District Superintendent of Police.*

FORM.

(See Section 8.)

A B has been appointed a member of the police-force under Act V. of 1861, and is vested with the powers, functions, and privileges of a police-officer.

For powers conferred under this section in—

- (1) the Central Provinces, *see* Notifications noted at p. 14 of the Central Provinces List of Local Rules and Orders, Ed. 1896;
- (2) Assam—in the districts of Kamrup, Darrang, Sibsagar, Khasi and Jaintia Hills, Nowgong, Goalpara, Lakhimpur, *see* Bengal Government Notification No. 1862, set out at p. 6 of the Manual of Local Rules and Orders relating to Assam, Ed. 1893.

THE POLICE ACT (NO. III.), 1888.*

(RECEIVED THE G.-G.'s ASSENT ON THE 17TH FEBRUARY 1888.)

An Act to amend the Law relating to the Regulation of Police.

WHEREAS it is expedient to relax those provisions of Acts for the regulation of police which restrict the employment of police-officers to the presidency, province, or place of the police-establishment of which they are members, it is hereby enacted as follows:—

Title, extent, and commencement.

1. (1) This Act may be called "The Police Act, 1888:"

(2) It extends to the whole of British India ; and

(3) It shall come into force at once.

2. (1) Notwithstanding anything in Act XXIV. of 1859 (*an Constitution of police- forces for special purposes. Act for the Better Regulation of the Police within the Territories subject to the Presidency of Fort St. George*), Act V. of 1861 (*an Act for the Regulation of Police*), "or the corresponding law for the time being in force in the territories administered by the Governor of Bombay in Council,"† or any Act relating to the police in any presidency-town,

* For Statement of Objects and Reasons, see *Gazette of India*, 1888, Pt. V., p. 130; for Report of the Select Committee, see *ibid*, 1888, Pt. IV., p. 8; and, for Proceedings in Council, see *ibid*, 1887, Pt. VI., p. 100, and *ibid*, 1888, pp. 37 and 40.

Act III. of 1883 has been declared in force in British Baluchistan by the British Baluchistan Laws Regulation (I. of 1890).

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act (XIV. of 1874), to be in force in the Districts of Hazaribagh, Lohardaga, Manbhum, and Palamau, and in Pargana Dhalbhum and the Kolhan in the Singbhum District.—See *Gazette of India*, 1895, Pt. I., p. 130.

It has been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act (XIII. of 1898).

It had been previously extended there by notification under s. 5 of Act XXV. of 1874.—See *Gazette of India*, 1892, Pt. I., p. 94.

In s. 2 (1), the words quoted have been substituted for the words, "the Bombay District Police Act, 1867," by the Second Schedule to the Bombay Districts Amending Act (XII. of 1891). See now the Bombay Districts Amending Act IV. of 1890.

the Governor-General in Council may, by notification in the *Gazette of India*, create a general police-district embracing parts of two or more presidencies, provinces, or places, and direct the enrolment, under Act V. of 1861, of a police-force for service therein.*

(2) With respect to such a district and the police-force enrolled therefor, the functions of the Local Government under Act V. of 1861, the Code of Criminal Procedure, 1882,† and any other enactment for the time being in force relating to police, shall, subject to any orders which the Governor-General in Council may make in this behalf, be discharged by the Governor-General in Council, or by such Local Government or other authority as the Governor-General in Council may appoint,* and the functions of the Inspector-General of Police, Deputy Inspectors-General, Assistant Inspectors-General, District Superintendents of Police, and Assistant District Superintendents, under Act V. of 1861, and any other enactment for the time being in force, shall, subject as aforesaid, be discharged by such officer or officers as may be appointed by the authority ordinarily discharging under this sub section the functions of the Local Government with respect to the district and force.

(3) Subject to any orders which the Governor-General in Council may make in this behalf, members of a police-force enrolled for service in a general police-district created under sub-section (1) shall have, within every part of any presidency, province, or place, of which any part is included in the district, the powers, duties, privileges, and liabilities, which, as police-officers appointed under Act V. of 1861, they have within the district.

(4) Any member of such a force whom the authority ordinarily discharging with respect thereto the functions of the Local Government under sub-section (2) has generally or specially empowered to act under this sub section may, subject to any orders which the Governor-General in Council may make in this behalf, exercise, in any part of the local area in which he has the powers of a police-officer under sub-section (3), any of the powers which an officer in charge of a police-station has in that part, and, when so exercising any such power, shall, subject as aforesaid, be deemed to be an officer in charge of a police-station discharging the functions of such an officer within the limits of his station.

* For notification issued under these powers, see *Gazette of India*, 1892, 1896, and 1898, Pt. I., pp. 44, 374, and 130, respectively.

† Act X. of 1882. But see now the Code of Criminal Procedure (Act V. of 1898).

(5) Subject to any orders which the Governor-General in Council may make in this behalf, a part of a presidency, province, or place included in a general police-district under sub-section (1) shall not, by reason of being included therein, cease, for the purposes of any enactment relating to police, to be part of the presidency, province, or place of which it forms part.

(6) For the purposes of this section, and subject to the provisions thereof, Act V. of 1861 shall, notwithstanding anything in section 46 of that Act, be deemed to take effect throughout the whole of British India.

3. Notwithstanding anything in any of the Acts mentioned or referred to in the last-foregoing section, Employment of police-officers beyond the presidency, province, or place to which they belong. but subject to any orders which the Governor-General in Council may make in this behalf, a member of the police-establishment of any presidency, province, or place may discharge the functions of a police-officer in any part of British India beyond the limits of the presidency, province, or place, and shall, while so discharging such functions, be deemed to be a member of the police-establishment of that part, and be vested with the powers, functions, and privileges, and be subject to the liabilities, of a police-officer belonging to that establishment.

ACT IX. OF 1890 : The Indian Railways Act, 1890.

RECEIVED THE G.-G's ASSENT ON THE 21ST MARCH 1890.

*An Act to consolidate, amend, and add to the Law relating to
Railways in India.*

WHEREAS it is expedient to consolidate, amend, and add to the law relating to railways in India ; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Title, extent, and commencement.

1. (1) This Act may be called the Indian Railways Act, 1890.

(2) It extends to the whole of British India, inclusive* (in so far as it has been or may be extended under the provisions of the Sindh-Pishin Railway Act, 1887) of British Baluchistan, and applies also to all subjects of Her Majesty within the dominions of Princes and States in India in alliance with Her Majesty, and to all native subjects of Her Majesty without and beyond British India and those dominions ; and

(3) It shall come into force on the first day of May 1890.

2. (1) On and from that day, the enactments specified in the first schedule are repealed to the extent mentioned in the third column thereof.

(2) But all rules, declarations, and appointments made, sanctions and directions given, forms approved, powers conferred, and notifications published under any of those enactments, or under any enactment repealed by any of them, shall, so far as they are consistent with this Act, be deemed to have been respectively made, given, approved, conferred, and published under this Act.

(3) Any enactment or document referring to any of those enactments, or to any enactment repealed by any of them, shall,

* Here the words " of Upper Burma and," repealed by Act XIII. of 1898, have been omitted.

so far as may be, be construed to refer to this Act, or to the corresponding portion thereof.

3. In this Act, unless there is something repugnant in the subject or context,—

Definitions.

(1) "tramway" means a tramway constructed under the Indian Tramways Act, 1886, or any special Act relating to tramways :

(2) "ferry" includes a bridge of boats, pontoons, or rafts, a swing-bridge, a flying bridge, and a temporary bridge, and the approaches to, and landing-places of, a ferry :

(3) "inland water" means any canal, river, lake, or navigable water in British India :

(4) "railway" means a railway, or any portion of a railway, for the public carriage of passengers, animals, or goods, and includes—

(a) all land within the fences or other boundary-marks indicating the limits of the land appurtenant to a railway ;

(b) all lines of rails, sidings, or branches worked over for the purposes of, or in connection with, a railway ;

(c) all stations, offices, warehouses, wharves, workshops, manufactories, fixed plant and machinery, and other works constructed for the purposes of, or in connection with, a railway ; and

(d) all ferries, ships, boats, and rafts which are used on inland waters for the purposes of the traffic of a railway, and belong to, or are hired or worked by, the authority administering the railway :

(5) "railway company" includes any persons, whether incorporated or not, who are owners or lessees of a railway, or parties to an agreement for working a railway :

(6) "railway administration" or "administration," in the case of a railway administered by the Government or a Native State, means the Manager of the railway, and includes the Government or the Native State ; and, in the case of the railway administered by a railway company, means the railway company :

(7) "railway servant" means any person employed by a railway administration in connection with the service of a railway :

(8) "Inspector" means an Inspector of Railways appointed under this Act :

(9) "goods" includes inanimate things of every kind :

(10) "rolling-stock" includes locomotive engines, tenders, carriages, wagons, trucks, and trollies of all kinds :

(11) "traffic" includes rolling-stock of every description as well as passengers, animals, and goods :

(12) "through traffic" means traffic which is carried over the railways of two or more railway administrations :

(13) "rate" includes any fare, charge, or other payment for the carriage of any passenger, animal, or goods :

(14) "terminals" includes charges in respect of stations sidings, wharves, depôts, warehouses, cranes, and other similar matters, and of any services rendered thereat :

(15) "pass" means an authority given by a railway administration, or by an officer appointed by a railway administration in this behalf, and authorizing the person to whom it is given to travel as a passenger on a railway gratuitously :

(16) "ticket" includes a single ticket, a return ticket, and a season ticket :

(18) "Collector" means the chief officer in charge of the land-revenue administration of a district, and includes any officer specially appointed by the Local Government to discharge the functions of a Collector under this Act.

CHAPTER II.

INSPECTION OF RAILWAYS.

Appointment and
duties of Inspectors.

4. (1) The Governor-General in Council may appoint persons, by name or by virtue of their office, to be Inspectors of Railways.

(2) The duties of an Inspector of Railways shall be—

(a) to inspect railways with a view to determine whether they are fit to be opened for the public carriage of passengers, and to report thereon to the Governor-General in Council as required by this Act.

- (b) to make such periodical or other inspections of any railway or of any rolling stock used thereon as the Governor-General in Council may direct ;
- (c) to make inquiry under this Act into the cause of any accident on a railway ;
- (d) to perform such other duties as are imposed on him by this Act or any other enactment for the time being in force relating to railways.

5. An Inspector shall, for the purpose of any of the duties which he is required or authorized to perform under this Act, be deemed to be a public servant within the meaning of the Indian Penal Code, and, subject to the control of the Governor-General in Council, shall, for that purpose, have the following powers, namely .—

- (a) to enter upon and inspect any railway or any rolling-stock used thereon ;
- (b) by an order in writing under his hand addressed to the railway administration, to require the attendance before him of any railway servant, and to require answers or returns to such inquiries as he thinks fit to make from such railway servant, or from the railway administration ;
- (c) to require the production of any book or document belonging to, or in the possession or control of, any railway administration (except a communication between a railway company and its legal advisers) which it appears to him to be necessary to inspect.

6. A railway administration shall afford to the Inspector all reasonable facilities for performing the duties and exercising the powers imposed and conferred upon him by this Act.

CHAPTER III.

CONSTRUCTION AND MAINTENANCE OF WORKS.

7. (1) Subject to the provisions of this Act, and, in the case of immovable property not belonging to the railway administration, to the provisions of any enactment for the time being in force for the acquisition of land for public purposes, and for

Authority of railway administrations to execute all necessary works.

companies, and subject also, in the case of a railway company, to the provisions of any contract between the company and the Government, a railway administration may, for the purpose of constructing a railway or the accommodation or other works connected therewith, and, notwithstanding anything in any other enactment for the time being in force,—

- (a) make or construct in, upon, across, under, or over, any lands, or any streets, hills, valleys, roads, railways, or tramways, or any rivers, canals, brooks, streams, or others waters, or any drains, water-pipes, gas-pipes, or telegraph lines, such temporary or permanent inclined planes, arches, tunnels, culverts, embankments, aqueducts, bridges, roads, “lines of railway,”* ways, passages, conduits, drains, piers, cuttings, and fences as the railway administration thinks proper ;
- (b) alter the course of any rivers, brooks, streams, or water-courses for the purpose of constructing and maintaining tunnels, bridges, passages, or other works over or under them, and divert or alter, as well temporarily as permanently, the course of any rivers, brooks, streams, or watercourses, or any roads, streets, or ways, or raise or sink the level thereof, in order the more conveniently to carry them over or under, or by the side of, the railway, as the railway administration thinks proper ;
- (c) make drains or conduits into, through, or under any lands adjoining the railway for the purpose of conveying water from or to the railway ;
- (d) erect and construct such houses, warehouses, offices, and other buildings, and such yards, stations, wharves, engines, machinery, apparatus, and other works and conveniences as the railway administration thinks proper,
- (e) alter, repair, or discontinue such buildings, works, and conveniences as aforesaid or any of them, and substitute others in their stead ; and
- (f) do all other acts necessary for making, maintaining, altering, or repairing, and using the railway.

* These words have been inserted by Act IX. of 1896, s. 1.

(2) The exercise of the powers conferred on a railway administration by sub-section (1) shall be subject to the control of the Governor-General in Council.

8. A railway administration may, for the purpose of exercising the powers conferred upon it by this Act, alter the position of any pipe for the supply of gas, water, or compressed air, or the position of any electric wire, or of any drain not being a main drain :

Provided that,—

(a) when the railway administration desires to alter the position of any such pipe, wire, or drain, it shall give reasonable notice of his intention to do so, and of the time at which it will begin to do so, to the local authority or company having control over the pipe, wire, or drain, or, when the pipe, wire, or drain, is not under the control of a local authority or company, to the person under whose control the pipe, wire, or drain is ;

(b) a local authority, company, or person receiving notice under proviso (a) may send a person to superintend the work, and the railway administration shall execute the work to the reasonable satisfaction of the person so sent, and shall make arrangements for continuing, during the execution of the work, the supply of gas, water, compressed air, or electricity, or the maintenance of the drainage, as the case may be.

9. (1) The Governor-General in Council may authorize any railway administration, in case of any slip or other accident happening or being apprehended to any cutting, embankment, or other work under the control of the railway administration, to enter upon any lands adjoining its railway for the purpose of repairing or preventing the accident, and to do all such works, as may be necessary for the purpose.

(2) In case of necessity, the railway administration may enter upon the lands, and do the works aforesaid, without having obtained the previous sanction of the Governor-General in Council, but, in such a case, shall, within seventy-two hours after such entry, make a report to the Governor-General in Council, specifying the nature of the accident, or apprehended accident, and of the works necessary to be done, and the power conferred on the railway administra-

tion by this sub-section shall cease and determine, if the Governor-General in Council, after considering the report, considers that the exercise of the power is not necessary for the public safety.

10. (1) A railway administration shall do as little damage as possible in the exercise of the powers conferred by any of the three last foregoing sections, and compensation shall be paid for any damage caused by the exercise thereof.

Payment of compensation for damage caused by lawful exercise of powers under section 7, 8, or 9.

(2) A suit shall not lie to recover such compensation, but, in case of dispute, the amount thereof shall, on application to the Collector, be determined and paid in accordance, so far as may be, "with the provisions of sections 11 to 15, both inclusive, sections 18 to 34, both inclusive, and sections 53 and 54 of the Land Acquisition Act, 1894, and the provisions of sections 51 and 52 of that Act shall apply to the award of compensation."*

11. (1) A railway administration shall make and maintain the following works for the accommodation of the owners and occupiers of lands adjoining the railway, namely:—

Accommodation works.

(a) such and so many convenient crossings, bridges, arches, culverts, and passages over, under, or by the sides of, or leading to or from, the railway as may, in the opinion of the Governor-General in Council, be necessary for the purpose of making good any interruptions caused by the railway to the use of the lands through which the railway is made, and

(b) all necessary arches, tunnels, culverts, drains, water-courses, or other passages, over or under, or by the sides of, the railway, of such dimensions as will, in the opinion of the Governor-General in Council, be sufficient at all times to convey water as freely from or to the lands lying near or affected by the railway as before the making of the railway, or as nearly so as may be.

(2) Subject to the other provisions of this Act, the works specified in clauses (a) and (b) of sub-section (1) shall be made during or immediately after the laying out or formation of the railway over the lands traversed thereby, and in such manner as to cause

* The portion quoted has been substituted by Act IX. of 1896, s. 2.

as little damage or inconvenience as possible to persons interested in the lands or affected by the works.

(3) The following provisions of this section are subject to the following provisos, namely:—

- (a) a railway administration shall not be required to make any accommodation-works in such a manner as would prevent or obstruct the working or using of the railway, or to make any accommodation-works with respect to which the owners and occupiers of the lands have agreed to receive, and have been paid, compensation in consideration of their not requiring the work to be made;
- (b) save as thereinafter in this chapter provided, a railway administration shall not, except on the requisition of the Governor-General in Council, be compelled to defray the cost of executing any further or additional accommodation-works for the use of the owners or occupiers of the lands after the expiration of ten years from the date on which the railway passing through the lands was first opened for public traffic;
- (c) where a railway administration has provided suitable accommodation for the crossing of a road or stream, and the road or stream is afterwards diverted by the act or neglect of the person having the control thereof, the administration shall not be compelled to provide other accommodation for the crossing of the road or stream.

(4) The Governor-General in Council may appoint a time for the commencement of any work to be executed under sub-section (1), and if, for fourteen days next after that time, the railway administration fails to commence the work, or, having commenced it, fails to proceed diligently to execute it in a sufficient manner, the Governor-General in Council may execute it, and recover from the railway administration the cost incurred by him in the execution thereof.

12. If an owner or occupier of any land affected by a railway consider the works made under the last-foregoing section to be insufficient for the commodious use of the land, or, if the Local Government or a local authority desires to construct a public road or other work across, under,

Power for owner, occupier, or local authority to cause additional accommodation-works to be made.

or over a railway, he or it, as the case may be, may at any time require the railway administration to make at his or its expense such further accommodation-works as he or it thinks necessary, and are agreed to by the railway administration, or as, in case of difference of opinion, may be authorized by the Governor-General in Council.

13. The Governor-General in Council may require that, with-
 Fences, screens, gates, and in a time to be specified in the requisition, or within such further time as he
 bars. may appoint in this behalf,—

- (a) boundary-marks or fences be provided or renewed by a railway administration for a railway or any part thereof, and for roads constructed in connection therewith;
- (b) any works in the nature of a screen near to or adjoining the side of, any public road constructed before the making of a railway, be provided or renewed by a railway administration for the purpose of preventing danger to passengers on the road by reason of horses or other animals being frightened by the sight or noise of the rolling-stock moving on the railway;
- (c) suitable gates, chains, bars, stiles, or hand-rails be corrected or renewed by a railway administration at places where a railway crosses a public road on the level;
- (d) persons be employed by a railway administration to open and shut such gates, chains, or bars.

14. (1) Where a railway administration has constructed a
 Over and under-bridges. railway across a public road on the level, the Governor-General in Council may at any time, if it appears to him necessary for the public safety, require the railway administration, within such time as he thinks fit, to carry the road either under or over the railway by means of a bridge or arch, with convenient ascents and descents, and other convenient approaches, instead of crossing the road on the level, or to execute such other works as, in the circumstances of the case, may appear to the Governor-General in Council to be best adapted for removing or diminishing the danger arising from the level-crossing.

(2) The Governor-General in Council may require, as a condition of making a requisition under sub-section (1), that the local

authority, if any, which maintains the road, shall undertake to pay the whole of the cost to the railway administration of complying with the requisition, or such portion of the cost as the Governor-General in Council thinks just.

Removal of trees dangerous to or obstructing the working of a railway.

15. (1) In either of the following cases, namely :—

(a) where there is danger that a tree standing near a railway may fall on the railway so as to obstruct traffic,

(b) when a tree obstructs the view of any fixed signal,

the railway administration may, with the permission of any Magistrate, fell the tree, or deal with it in such other manner as will, in the opinion of the railway administration, avert the danger or remove the obstruction, as the case may be.

(2) In case of emergency, the power mentioned in subsection (1) may be exercised by a railway administration without the permission of a Magistrate.

(3) Where a tree felled or otherwise dealt with under subsection (1) or sub section (2) was in existence before the railway was constructed, or the signal was fixed, any Magistrate may, upon the application of the persons interested in the tree, award to those persons such compensation as he thinks reasonable.

(4) Such an award, subject, where made in a presidency-town by any Magistrate other than the Chief Presidency Magistrate, or, where made elsewhere, by any Magistrate other than the District Magistrate, to revision by the Chief Presidency Magistrate or the District Magistrate, as the case may be, shall be final.

(5) A Civil Court shall not entertain a suit to recover compensation for any tree felled or otherwise dealt with under this section.

CHAPTER IV.

OPENING OF RAILWAYS.

16. (1) A railway administration may, with the previous sanction of the Governor-General in Council, use upon a railway locomotive engines or other motive power and rolling-stock to be drawn or propelled thereby.

(2) But rolling-stock shall not be moved upon a railway by steam or other motive power until such general rules for the railway as may be deemed to be necessary have been made, sanctioned, and published under this Act.

17. (1) Subject to the provisions of sub-section (2), a railway administration shall, one month at least before it intends to open any railway for the public carriage of passengers, give to the Governor-General in Council notice in writing of its intention.

(2) The Governor-General in Council may in any case, if he thinks fit, reduce the period of, or dispense with, the notice mentioned in sub-section (1).

18. A railway shall not be opened for the public carriage of passengers until the Governor-General in Council or an Inspector empowered by the Governor-General in Council in this behalf has, by order, sanctioned the opening thereof for that purpose.

19. (1) The sanction of the Governor-General in Council under the last foregoing section shall not be given until an Inspector has, after inspection of the railway, reported in writing to the Governor-General in Council—

- (a) that he has made a careful inspection of the railway and rolling-stock ;
- (b) that the moving and fixed dimensions prescribed by the Governor-General in Council have not been infringed ;
- (c) that the weight of rails, strength of bridges, general, structural character of the works, and the size of and maximum gross load upon, the axles of any rolling-stock are such as have been prescribed by the Governor-General in Council ;
- (d) that the railway is sufficiently supplied with rolling-stock ;
- (e) that general rules for the working of the railway, when opened for the public carriage of passengers, have been made, sanctioned, and published under this Act ; and

(1) that, in his opinion, the railway can be opened for the public carriage of passengers without danger to the public using it.

(2) If, in the opinion of the Inspector, the railway cannot be so opened without danger to the public using it, he shall state that opinion, together with the grounds therefor, to the Governor-General in Council, and the Governor-General in Council may thereupon order the railway administration to postpone the opening of the railway.

(3) An order under the last foregoing sub-section must set forth the requirements to be complied with as a condition precedent to the opening of the railway being sanctioned, and shall direct the postponement of the opening of the railway until those requirements have been complied with, or the Governor-General in Council is otherwise satisfied that the railway can be opened without danger to the public using it.

(4) The sanction given under this section may be either absolute or subject to such conditions as the Governor-General in Council thinks necessary for the safety of the public.

(5) When sanction for the opening of a railway is given subject to conditions, and the railway administration fails to fulfil those conditions, the sanction shall be deemed to be void, and the railway shall not be worked or used until the conditions are fulfilled to the satisfaction of the Governor-General in Council.

20. (1) The provisions of sections 17, 18, and 19, with respect to the opening of a railway, shall extend to the opening of the works mentioned in sub-section (2) when those works form part of, or are directly connected with, a railway used for the public carriage of passengers, and have been constructed after the inspection which preceded the first opening of the railway.

(2) The works referred to in sub-section (1) are additional lines of railway, deviation lines, stations, junctions, and crossings on the level, and any alteration or re-construction materially affecting the structural character of any work to which the provisions of sections 17, 18, and 19 apply, or are extended by this section.

21. When an accident has occurred resulting in a temporary suspension of traffic, and either the original line and works have been rapidly

Exceptional provision.

restored to the original standard, or a temporary diversion has been laid for the purpose of restoring communication, the original line and works so restored, or the temporary diversion, as the case may be, may, in the absence of the Inspector, be opened for the public carriage of passengers, subject to the following conditions, namely:—

(a) that the railway servant in charge of the works undertaken by reason of the accident has certified in writing that the opening of the restored line and works, or of the temporary diversion, will not, in his opinion, be attended with danger to the public using the line and works or the diversion; and

(b) that notice by telegraph of the opening of the line and works or the diversion shall be sent, as soon as may be, to the Inspector appointed for the railway.

22. The Governor-General in Council may make rules defining the cases in which, and in those cases the extent to which, the procedure prescribed in sections 7 to 20 (both inclusive) may be dispensed with.

Power to make rules with respect to the opening of railways.

23. (1) When, after inspecting any open railway used for the public carriage of passengers or any rolling-stock used thereon, an Inspector is of opinion that the use of the railway or of any specified rolling-stock will be attended with danger to the public using it, he shall state that opinion, together with the grounds therefor, to the Governor-General in Council; and the Governor-General in Council may thereupon order that the railway be closed for the public carriage of passengers, or that the use of the rolling-stock so specified be discontinued, or that the railway or the rolling-stock so specified be used for the public carriage of passengers on such conditions only as the Governor-General in Council may consider necessary for the safety of the public.

Power to close an opened railway.

(2) An order under sub-section (1) must set forth the grounds on which it is founded.

24. (1) When a railway has been closed under the last foregoing section, it shall not be re-opened for the public carriage of passengers until it has been inspected, and its re-opening sanctioned, in accordance with the provisions of this Act.

Re-opening of a closed railway.

(2) When the Governor-General in Council has ordered under the last foregoing section that the use of any specified rolling-stock be discontinued, that rolling-stock shall not be used until an Inspector has reported that it is fit for use, and the Governor-General in Council has sanctioned its use.

(3) When the Governor-General in Council has imposed under the last foregoing section any conditions with respect to the use of any railway or rolling-stock, those conditions shall be observed until they are withdrawn by the Governor-General in Council.

25. (1) The Governor-General in Council may, by general Delegation of powers under or special order, authorize the discharge this chapter to Inspectors. of any of his functions under this chapter by an Inspector, and may cancel any sanction or order given by an Inspector discharging any such function, or attach thereto any condition which the Governor-General in Council might have imposed if the sanction or order had been given by himself.

(2) A condition imposed under sub-section (1) shall, for all the purposes of this Act, have the same effect as if it were attached to a sanction or order given by the Governor-General in Council.

CHAPTER V.

RAILWAY COMMISSIONS AND TRAFFIC FACILITIES.

Railway Commissions.

26. (1) For the purposes of this chapter the Governor-General in Council shall, as occasion may in his opinion require, appoint a commission, styled a Railway Commission (in this Act referred to as the Commissioners), and consisting of one Law Commissioner and two Lay Commissioners.

(2) The Commissioners shall sit at such times and in such places as the Governor-General in Council appoints.

(3) The Law Commissioner shall be such Judge of the High Court having jurisdiction in reference to European British subjects under the Code of Criminal Procedure, 1882, in the place where the Commissioners are to sit as, in the case of a High Court established under the Statute 24 and 25 Victoria, chapter 104, the Chief Justice, or, in the case of the Chief Court of the Punjab, the Senior Judge, or, in the case of the Court of the Recorder of Ran-

goon, the Chief Commissioner of Burma, may, on the request of the Governor-General in Council, assign by writing under his hand.

(4) The Lay Commissioners shall be appointed by the Governor-General in Council, and one at least of them shall be of experience in railway business.

Restriction of jurisdiction of Railway Commission to cases specially referred.

27. The Commissioners shall take cognizance of such cases only as are referred to them by the Governor-General in Council.

Reference of cases to Railway Commission.

28. In any of the following circumstances, namely :—

(a) where complaint is made to the Governor-General in Council of anything done, or any omission made, by a railway administration in violation or contravention of any provision of this chapter ;

(b) where any difference which is, under the provisions of any agreement required or authorized to be referred to arbitration arises between railway administrations, and the railway administrations apply to the Governor-General in Council to have it referred to the Commissioners ;

(c) where any other difference, being a difference between railway administrations, or one to which a railway administration is a party, arises, and the parties thereto apply to the Governor-General in Council to have it referred to the Commissioners ;

the Governor-General in Council may, if he thinks fit, refer the case to the Commissioners for decision.

29. The three Commissioners shall attend at the hearing of any case referred to them for decision under this chapter, and the Law Commissioner shall preside at the hearing.

30. (1) In hearing any such case, the Commissioners shall have all the powers which may be exercised in the hearing of an original civil suit by a High Court.

Powers of Railway Commission.

(2) The decision shall, if the Commissioners differ in opinion, be in accordance with the opinion of the majority, and the final order in the case shall be by way of injunction, and not otherwise.

(3) At the hearing, the Commissioners may permit any party to appear before them either by himself or by any legal practitioner entitled to practise in any High Court.

31. (1) An appeal shall not lie from any order of the Commissioners upon any question of fact on which two of the Commissioners are agreed.

Appeals from orders of Railway Commission.

(2) Subject to the provisions of sub-section (1), an appeal shall lie from an order of the Commissioners—

(a) where the Law Commissioner was the Recorder or Additional Recorder of Rangoon, to the High Court of Judicature at Fort William in Bengal, and,

(b) in any other case, to the High Court of which the Law Commissioner was a member.

(3) Such an appeal must be presented within six months from the date of the order appealed from, and shall be heard by a bench of as many Judges, not being fewer than three, as the High Court may by rule prescribe.

(4) In the hearing of the appeal, the High Court shall, subject to the other provisions of this chapter, have all the power which it has as an Appellate Court under the Code of Civil Procedure, and may make any order which the Commissioners could have made.

32. Notwithstanding any appeal to the High Court from an order of the Commissioners, the order shall, unless the Commissioners or the majority of them see fit to suspend it, continue in operation until it is reversed or varied by that Court.

Operation of orders of Railway Commission.

33. (1) The Commissioners, in the exercise of their jurisdiction under this chapter, may from time to time, with the general or special sanction of the Governor-General in Council, call in one or more persons of engineering or other technical knowledge to act as assessors.

Assessors.

(2) There shall be paid to such persons such remuneration as the Governor-General in Council upon the recommendation of the Commissioners may direct.

34. The Governor-General in Council may make rules regulating proceedings before the Commissioners, and enabling the Commissioners to carry into effect the provisions of this chapter. and prescribing fees to be taken in relation to proceedings before the Commissioners.

Power of the Governor-General in Council to make rules for the purposes of this chapter.

35. The costs of and incidental to any proceedings before the Commissioners or the High Court under this chapter shall be in the discretion of the Commissioners or the High Court, as the case may be, and the payment of costs awarded by the Commissioners may be enforced by the Court, of which the Law Commissioner was a Judge, as if the payment had been ordered by a decree of a High Court.

36. (1) The Court of which the Law Commissioner was a Judge may, if it appears on the application of any person who was a party to the proceedings before the Commissioners, or on appeal before the High Court, or of the representative of any such person, that an injunction made under this chapter by the Commissioners or by a High Court has not been obeyed by the party enjoined, order such party to pay a sum not exceeding one thousand rupees for every day during which the injunction is disobeyed after the date of the order directing such payment.

(2) The payment of such sum may be enforced by the Court which made the order as if that Court had given a decree for the same, and the Court may direct that the whole or any part of the sum shall be paid to the person making the application under sub-section (1), or to the Government.

37. A document purporting to be signed by the Commissioners, or any of them, shall be received in evidence without proof of the signature, and shall, until the contrary is proved, be deemed to have been so signed and to have been duly executed or issued by the Commissioners.

Evidence of documents.

38. The Commissioners shall, as soon as may be after the disposal of each case referred to them, submit to the Governor-General in Council a special report on the case, and the Governor-General in Council shall cause the report to be published in such manner as he thinks fit for the information of persons interested in the subject-matter thereof.

39. Except for the purpose of the last foregoing section, a Railway Commission shall be deemed to be dissolved at the close of the last of the sittings of the Commissioners for the decision of the cases referred to them :

Provided that, on the application of any person who was a party to the proceedings before the Commissioners, or of the representative of any such person, the Governor-General in Council may, if he thinks fit, in any case in which the order passed by the Commissioners is not open to appeal, re-appoint the Commissioners for the purpose of hearing an application for a review of their decision, and of granting the same, and re-hearing the case if they think that the case should be re-heard.

40. Subject to the foregoing provisions of this chapter, and to any direction of Her Majesty in Council, an order of the Commissioners shall be final, and shall not be questioned in or restrained by any Court.

41. Except as provided in this Act, no suit shall be instituted or proceeding taken for anything done or any omission made by a railway administration in violation or contravention of any provision of this chapter, or of any order made thereunder by the Commissioners, or by a High Court.

Traffic Facilities.

42. (1) Every railway administration shall, according to its powers, afford all reasonable facilities for the receiving, forwarding, and delivering of traffic upon and from the several railways belonging to or worked by it, and for the return of rolling-stock

Duty of railway administrations to arrange for receiving and forwarding traffic without unreasonable delay, and without partiality.

(2) A railway administration shall not make or give any undue or unreasonable preference or advantage to, or in favour of, any

particular person or railway administration, or any particular description of traffic, in any respect whatsoever, or subject any particular person or railway administration, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

(3) A railway administration, having or working railways which form part of a continuous line of railway communication, or having its terminus or station within one line of the terminus or station of another railway administration, shall afford all due and reasonable facilities for receiving and forwarding by one of such railways all the traffic arriving by the other at such terminus or station, without any unreasonable delay, and without any such preference or advantage, or prejudice or disadvantage as aforesaid, and so that no obstruction may be offered to the public desirous of using such railways as a continuous line of communication, and so that all reasonable accommodation may, by means of such railways, be at all times afforded to the public in that behalf.

(4) The facilities to be afforded under this section shall include the due and reasonable receiving, forwarding, and delivering by every railway administration, at the request of any other railway administration, of through traffic to and from the railway of any other railway administration at through rates :

Provided as follows:—

- (a) the railway administration requiring the traffic to be forwarded shall give written notice of the proposed through rate to each forwarding railway administration, stating both its amount and its apportionment, and the route by which the traffic is proposed to be forwarded. The proposed through rate for animals or goods may be per truck or per maund ;
- (b) each forwarding railway administration shall, within the prescribed period after the receipt of such notice, by written notice inform the railway administration requiring the traffic to be forwarded whether it agrees to the rate, apportionment, and route, and, if it has any objection, what the grounds of the objection are ;
- (c) if, at the expiration of the prescribed period, no such objection has been sent by any forwarding railway administration, the rate shall come into operation at the expiration of that period ;

- (d) if an objection to the rate, apportionment, or route has been sent within the prescribed period, the Governor-General in Council may, if he thinks fit, on the request of any of the railway administrations, refer the case to the Commissioners for their decision ;
- (e) if the objection is to the granting of the rate or to the route, the Commissioners shall consider whether the granting of the rate is a due and reasonable facility in the interest of the public, and whether, regard being had to the circumstances, the route proposed is a reasonable route, and shall allow or refuse the rate accordingly, or fix such other rate as may seem to the Commissioners to be just and reasonable ;
- (f) if the objection is only to the apportionment of the rate, and the case has been referred to the Commissioners, the rate shall come into operation at the expiration of the prescribed period, but the decision of the Commissioners as to its apportionment shall be retrospective : in the case of any other objection, the operation of the rate shall be suspended until the Commissioners make their order in the case ;
- (g) the Commissioners, in apportioning the through rate, shall take into consideration all the circumstances of the case including any special expense incurred in respect of the construction, maintenance, or working of the route, or any part of the route, as well as any special charges which any railway administration is entitled to make in respect thereof ;
- (h) the Commissioners shall not in any case compel any railway administration to accept lower mileage rates than the mileage rates which the administration may, for the time being, legally be charging for like traffic carried by a like mode of transit on any other line of communication between the same points, being the points of departure and arrival of the through route ;
- (i) subject to the foregoing provisions of this sub-section, the Commissioners shall have full power to decide that any proposed through rate is due and reasonable, notwithstanding that a less amount may be allotted to any forwarding railway administration

out of the through rate than the maximum rate which the railway administration is entitled to charge, and to allow and apportion the through rate accordingly ;

(f) the prescribed period mentioned in this sub-section shall be one month, or such longer period as the Governor-General in Council may, by general or special order, prescribe.

43. (1) Whenever it is shown that a railway administration charges one trader or class of traders, or the traders in any local area, lower rates for the same or similar animals or goods, or lower rates for the same or similar services, than it charges to other traders or classes of traders, or to the traders in another local area, the burden of proving that such lower charge does not amount to an undue preference shall lie on the railway administration.

(2) In deciding whether a lower charge does or does not amount to an undue preference, the Commissioners may, so far as they think reasonable, in addition to any other considerations affecting the case, take into consideration whether such lower charge is necessary for the purpose of securing, in the interests of the public, the traffic in respect of which it is made.

44. Where a railway administration is a party to an agreement for procuring the traffic of the railway to be carried on any inland water by any ferry, ship, boat, or raft which does not belong to, or is not hired or worked by, the railway administration, the provisions of the two last foregoing sections applicable to a railway shall extend to the ferry, ship, boat, or raft, in so far as it is used for the purposes of the traffic of the railway.

Terminals.

45. A railway administration may charge reasonable terminals.

46. (1) The Governor-General in Council may, if he thinks fit, refer to the Commissioners for decision any question or dispute which may arise with respect to the terminals charged by a railway administration, and the Commissioners may thereupon decide what is a reasonable sum to be paid to the railway administration in respect of terminals.

(2) In deciding the question or dispute, the Commissioners shall have regard only to the expenditure reasonably necessary to provide the accommodation in respect of which the terminals are charged, irrespective of the outlay which may have been actually incurred by the railway administration in providing that accommodation.

CHAPTER VI.

WORKING OF RAILWAYS.

General.

47. (1) Every railway company, and, in the case of a railway administered by the Government, an officer to be appointed by the Governor-General in Council in this behalf, shall make general rules consistent with this Act for the following purposes, namely:—

- (a) for regulating the mode in which, and the speed at which, rolling-stock used on the railway is to be moved or propelled;
- (b) for providing for the accommodation and convenience of passengers, and regulating the carriage of their luggage;
- (c) for declaring what shall be deemed to be, for the purposes of this Act, dangerous or offensive goods, and for regulating the carriage of such goods;
- (d) for regulating the conditions on which the railway administration will carry passengers suffering from infectious or contagious disorders, and providing for the disinfection of carriages which have been used by such passengers;
- (e) for regulating the conduct of the railway servants;
- (f) for regulating the terms and conditions on which the railway administration will warehouse or retain goods at any station on behalf of the consignee or owner; and,
- (g) generally, for regulating the travelling upon, and the use, working, and management of, the railway.

(2) The rules may provide that any person committing a breach of any of them shall be punished with fine which may extend to any sum not exceeding fifty rupees, and that, in the case of a rule made under clause (e) of sub-section (1), the railway servant shall forfeit a sum not exceeding one month's pay, which sum may be deducted by the railway administration from his pay.

(3) A rule made under this section shall not take effect until it has received the sanction of the Governor-General in Council, and been published in the *Gazette of India*:

Provided that, where the rule is in the terms of a rule which has already been published at length in the *Gazette of India*, a notification in that Gazette referring to the rule already published, and announcing the adoption thereof, shall be deemed a publication of a rule in the *Gazette of India* within the meaning of this sub-section.

(4) The Governor-General in Council may cancel any rule made under this section, and the authority required by sub-section (1) to make rules thereunder may at any time, with the previous sanction of the Governor-General in Council, rescind or vary any such rule.

(5) Every rule purporting to have been made for any railway under section 8 of the Indian Railway Act, 1879, and appearing from the *Gazette of India* to be intended to apply to the railway at the commencement of this Act, shall, notwithstanding any irregularity in the making or publication of the rule, be deemed to have been made, and to have taken effect under this section.

(6) Every railway administration shall keep at each station on its railway a copy of the general rules for the time being in force under this section on the railway, and shall allow any person to inspect it free of charge at all reasonable times.

48. Where two or more railway administrations, whose railways have a common terminus or a portion of the same line of rails in common, or form separate portions of one continued line of railway communication, are not able to agree upon arrangements for conducting at such common terminus, or at the point of junction between them, their joint traffic with safety to the public, the Governor-General in Council, upon the application of either or any of the administrations, may decide the matters in dispute between them, so far as these matters relate to the safety of

the public, and may determine whether the whole or what proportion of the expenses attending on such arrangements shall be borne by either or any of the administrations respectively.

49. Any railway company, not being a company for which the Statute 42 and 43 Victoria, chapter 41, provides, may, from time to time, make and carry into effect agreements with the Governor-General in Council for the construction or rolling-stock, plant, or machinery used on, or in connection with, railways, or for leasing or taking on lease any rolling-stock, plant, machinery, or equipments required for use on a railway, or for the maintenance of rolling-stock.

50. Any railway company, not being a company for which the Statute 42 and 43 Victoria, chapter 41, provides may, from time to time, make with the Governor-General in Council, and carry into effect, or, with the sanction of the Governor-General in Council, make with any other railway administration, and carry into effect, any agreement with respect to any of the following purposes namely:—

- (a) the working, use, management, and maintenance of any railway;
- (b) the supply of rolling-stock and machinery necessary for any of the purposes mentioned in clause (a), and of officers and servants for the conduct of the traffic of the railway;
- (c) the payments to be made and the conditions to be performed with respect to such working, use, management, and maintenance;
- (d) the interchange-accommodation, and conveyance of traffic being on, coming from, or intended for, the respective railways of the contracting parties and the fixing, collecting, apportionment and appropriation of the revenues arising from that traffic;
- (e) generally, the giving effect to any such provisions or stipulations with respect to any of the purposes hereinbefore in this section mentioned as the contracting parties may think fit and mutually agree on:

Provided that the agreement shall not affect any of the rates which the railway administrations, parties thereto, are from time to

time respectively authorized to demand and receive from any person ; and that every person shall, notwithstanding the agreement, be entitled to the use and benefit of the railways of any railway administrations, parties to the agreement, on the same terms and conditions, and on payment of the same rates, as he would be if the agreement had not been entered into.

51. Any railway company, not being a company for which the Statute 42 and 43 Victoria, chapter 41, provides, may, from time to time, exercise, with the sanction of the Governor-General in Council, all or any of the following powers, namely :—

Establishment of ferries and roadways for accommodation of traffic.

- (a) it may establish, for the accommodation of the traffic of its railway, any ferry equipped with machinery and plant of good quality and adequate in quantity to work the ferry ;
- (b) it may work, for purposes other than the accommodation of the traffic of the railway, any ferry established by it under this section ;
- (c) it may provide and maintain, on any of its bridges, roadways for foot-passengers, cattle, carriages, carts, or other traffic ;
- (d) it may construct and maintain roads for the accommodation of traffic passing to or from its railway ;
- (e) it may provide and maintain any means of transport which may be required for the reasonable convenience of passengers, animals, or goods carried or to be carried on its railway ;
- (f) it may charge tolls on the traffic using such ferries, roadways, roads, or means of transport as it may provide under this section, according to tariffs to be arranged from time to time with the sanction of the Governor-General in Council.

52. Every railway administration shall, in forms to be prescribed by the Governor General in Council, prepare half-yearly, or at such intervals as the Governor-General in Council may prescribe, such returns of its capital and revenue transactions, and of its traffic, as the Governor-General in Council may require, and shall forward a

Returns.

copy of such returns to the Governor-General in Council at such times as he may direct.

Carriage of Property.

53. (1) Every railway administration shall determine the maximum load for every wagon or truck in its possession, and shall exhibit the words or figures representing the load so determined in a conspicuous manner on the outside of every such wagon or truck.

(2) Every person owning a wagon or truck which passes over a railway shall similarly determine and exhibit the maximum load for the wagon or truck.

(3) The gross weight of any such wagon or truck bearing on the axles when the wagon or truck is loaded to such maximum load shall not exceed such limit as may be fixed by the Governor-General in Council for the class of axle under the wagon or truck.

54. (1) Subject to the control of the Governor-General in Council, a railway administration may impose conditions, not inconsistent with this Act, or with any general rule thereunder, with respect to the receiving, forwarding, or delivering of any animals or goods.

(2) The railway administration shall keep at each station on its railway a copy of the conditions for the time being in force under sub-section (1) at the station, and shall allow any person to inspect it free of charge at all reasonable times.

(3) A railway administration shall not be bound to carry any animal suffering from any infectious or contagious disorder.

55. (1) If a person fails to pay, on demand made by or on behalf of a railway administration, any rate, terminal, or other charge due from him in respect of any animals or goods, the railway administration may detain the whole or any of the animals or goods, or, if they have been removed from the railway, any other animals or goods of such person then being in, thereafter coming into, its possession.

(2) When any animals or goods have been detained under sub-section (1), the railway administration may sell by public auction, in the case of perishable goods, at once, and, in the case of other goods or of animals, on the expiration of at least fifteen days

notice of the intended auction published in one or more of the local newspapers, or, where there are no such newspapers, in such manner as the Governor-General in Council may prescribe, sufficient of such animals or goods to produce a sum equal to the charge; and all expenses of such detention, notice, and sale, including, in the case of animals, the expenses of the feeding, watering, and tending thereof.

(3) Out of the proceeds of the sale, the railway administration may retain a sum equal to the charge and the expenses aforesaid, rendering the surplus, if any, of the proceeds, and such of the animals or goods (if any) as remain unsold, to the person entitled thereto.

(4) If a person, on whom a demand for any rate, terminal, or other charge due from him has been made, fails to remove from the railway, within a reasonable time, any animals or goods which have been detained under sub-section (1), or any animals or goods which have remained unsold after a sale under sub-section (2), the railway administration may sell the whole of them, and dispose of the proceeds of the sale, as nearly as may be, under the provisions of sub-section (3).

(5) Notwithstanding anything in the foregoing sub-sections, the railway administration may recover by suit any such rate, terminal, or other charge as aforesaid or balance thereof.

56. (1) When any animals or goods have come into the possession of a railway administration for things on a railway carriage or otherwise, and are not claimed by the owner or other person appearing to the railway administration to be entitled thereto, the railway administration shall, if such owner or person is known, cause a notice to be served upon him requiring him to remove the animals or goods.

(2) If such owner or person is not known, or the notice cannot be served upon him, or he does not comply with the requisition in the notice, the railway administration may, within a reasonable time, subject to the provisions of any other enactment for the time being in force, sell the animals or goods, as nearly as may be, under the provisions of the last foregoing section, rendering the surplus, if any, of the proceeds of the sale to any person entitled thereto.

57. Where any animals, goods, or sale-proceeds in the pos-

Power for railway adminis-
trations to require indemnity
on delivery of goods in cer-
tain cases.

session of a railway administration are claimed by two or more persons, or the ticket or receipt given for the animals or goods is not forthcoming, the railway administration may withhold delivery of the animals, goods, or sale-proceeds until the person entitled in its opinion to receive them has given an indemnity, to the satisfaction of the railway administration, against the claims of any other person with respect to the animals, goods, or sale-proceeds.

58. (1) The owner or person having charge of any goods

Requisitions for written
accounts of description of
goods.

which are brought upon a railway for the purpose of being carried thereon, and the consignee of any goods which have been carried on a railway, shall, on the request of any railway servant appointed in this behalf by the railway administration, deliver to such servant an account in writing signed by such owner or person, or by such consignee, as the case may be, and containing such a description of the goods as may be sufficient to determine the rate which the railway administration is entitled to charge in respect thereof.

(2) If such owner, person, or consignee refuses or neglects to give such an account, and refuses to open the parcel or package containing the goods, in order that their description may be ascertained, the railway administration may (a) in respect of goods which have been brought for the purpose of being carried on the railway, refuse to carry the goods, unless in respect thereof a rate is paid not exceeding the highest rate which may be in force at the time on the railway for any class of goods; or (b), in respect of goods which have been carried on the railway, charge a rate not exceeding such highest rate.

(3) If an account delivered under sub-section (1) is materially false with respect to the description of any goods to which it purports to relate, and which have been carried on the railway, the railway administration may charge, in respect of the carriage of the goods a rate not exceeding double the highest rate which may be in force at the time on the railway for any class of goods.

(4) If any difference arises between a railway servant and the owner or person having charge, or the consignee, of any goods which have been brought to be carried, or have been carried, on a railway, respecting the description of goods of which an account

has been delivered under this section, the railway servant may detain and examine the goods.

(5) If it appears from the examination that the description of the goods is different from that stated in an account delivered under sub-section (1), the person who delivered the account, or, if the person is not the owner of the goods, then that person and the owner, jointly and severally, shall be liable to pay to the railway administration the cost of the detention and examination of the goods, and the railway administration shall be exonerated from all responsibility for any loss which may have been caused by the detention or examination thereof.

(6) If it appears that the description of the goods is not different from that stated in an account delivered under sub-section (1), the railway administration shall pay the cost of the detention and examination, and be responsible to the owner of the goods for any such loss as aforesaid.

58. (1) No person shall be entitled to take with him, or to require a railway administration to carry, any dangerous or offensive goods upon a railway.

(2) No person shall take any such goods with him upon a railway without giving notice of their nature to the station-master or other railway servant in charge of the place where he brings the goods upon the railway, or shall tender or deliver any such goods for carriage upon a railway without distinctly marking their nature on the outside of the package containing them, or otherwise giving notice in writing of their nature to the railway servant to whom he tenders or delivers them.

(3) Any railway servant may, refuse to receive such goods for carriage, and, when such goods have been so received without such notice as is mentioned in "sub-section (2)"* having to his knowledge been given, may refuse to carry them, or may stop their transit.

(4) If any railway servant has reason to believe any such goods to be contained in a package, with respect to the contents whereof such notice as is mentioned in sub-section (2) has not, to his knowledge, been given, he may cause the package to be opened for the purpose of ascertaining its contents.

* These have been substituted for the words and figures "sub-section (1)" by Act IX. of 1896, s. 3.

(5) Nothing in this section shall be construed to derogate from the Indian Explosives Act, 1884, or any rule under that Act, and nothing in sub-sections (1), (3), and (4) shall be construed to apply to any goods tendered or delivered for carriage by order or on behalf of the Government, or to any goods which an officer, soldier, sailor, or police-officer, or a person enrolled as a volunteer under the Indian Volunteers Act, 1869, may take with him upon a railway in the course of his employment or duty as such.

60. At every station at which a railway administration quotes Exhibition to the public of a rate to any other station for the carriage of traffic other than passengers and their luggage, the railway servant appointed by the administration to quote the rate shall, at the request of any person, show to him, at all reasonable times, and without payment of any fee, the rate-books or other documents in which the rate is authorized by the administration or administrations concerned.

61. (1) Where any charge is made by, and paid to, a railway administration in respect of the carriage of goods over its railway, the administration shall, on the application of the person by whom, or on whose behalf, the charge has been paid, render to the applicant an account showing how much of the charge comes under each of the following heads, namely :—

- (a) the carriage of the goods on the railway ;
- (b) terminals ;
- (c) demurrage ; and
- (d) collection, delivery, and other expenses, but without particularizing the several items of which the charge under each head consists.

(2) The application under sub-section (1) must be in writing and be made to the railway administration within one month after the date of the payment of the charge by or on behalf of the applicant, and the account must be rendered by the administration within two months after the receipt of the application.

Carriage of Passengers.

62. The Governor-General in Council may require any railway administration to provide and maintain in proper order, in any train worked by it which carries passengers, such Communication between passengers and railway servant in charge of trains.

efficient means of communication between the passengers and the railway servants in charge of the train as the Governor-General in Council has approved.

63. Every railway administration shall fix, subject to the approval of the Governor-General in Council, the maximum number of passengers which may be carried in each compartment of every description of carriage, and shall exhibit the number so fixed in a conspicuous manner inside or outside each compartment in English, or in one or more of the vernacular languages in common use in the territory traversed by the railway, or both in English and in one or more of such vernacular languages, as the Governor-General in Council, after consultation with the railway administration, may determine.

64. (1) On any day after the first day of January 1891, every railway administration shall, in every train carrying passengers, reserve for the exclusive use of females one compartment at least of the lowest class of carriage forming part of the train.

(2) One such compartment so reserved shall, if the train is to run for a distance exceeding fifty miles, be provided with a closet.

65. Every railway administration shall cause to be posted in a conspicuous and accessible place at every station on its railway in English, and in a vernacular language in common use in the territory where the station is situate, a copy of the time-tables for the time being in force on the railway, and lists of the fares chargeable for travelling from the station where the lists are posted to every place for which card-tickets are ordinarily issued to passengers at that station.

66. (1) Every person desirous of travelling on a railway shall, upon payment of his fare, be supplied with a ticket, specifying the class of carriage for which, and the place from, and the place to, which, the fare has been paid, and the amount of the fare.

(2) The matters required by sub-section (1) to be specified on a ticket shall be set forth—

(a) if the class of carriage to be specified thereon is the lowest class, then in a vernacular language in common use in the territory traversed by the railway, and

(b) if the class of carriage to be so specified is any other than the lowest class, then in English.

Provision for case in which tickets have been issued for trains not having room available for additional passengers.

67. (1) Fares shall be deemed to be accepted, and tickets to be issued, subject to the condition of there being room available in the train for which the tickets are issued.

(2) A person to whom a ticket has been issued, and for whom there is not room available in the train for which the ticket was issued, shall, on returning the ticket within three hours after the departure of the train, be entitled to have his fare at once refunded.

(3) A person for whom there is not room available in the class of carriage for which he has purchased a ticket, and who is obliged to travel in a carriage of a lower class shall be entitled, on delivering up his ticket, to a refund of the difference between the fare paid by him and the fare payable for the class of carriage in which he travelled.

68. No person shall, without the permission of railway servant, enter any carriage on a railway for the purpose of travelling therein as a passenger unless he has with him a proper pass or ticket.

69. Every passenger by railway shall, on the requisition of any railway servant appointed by the railway administration in this behalf, present his pass or ticket to the railway servant for examination, and, at or near the end of the journey for which the pass or ticket was issued, or in the case of a season pass or ticket, at the expiration of the period for which it is current, deliver up the pass or ticket to the railway servant.

70. A return ticket or season ticket shall not be transferable, and may be used only by the person for whose journey to and from the places specified thereon it was issued.

71. (1) A railway administration may refuse to carry, except in accordance with the conditions prescribed under section 47, sub-section (1), clause (d), a person suffering from any infectious or contagious disorder.

Power to refuse to carry persons suffering from infectious or contagious disorder.

(2) A person suffering from such a disorder shall not enter or travel upon a railway without the special permission of the station-master or other railway servant in charge of the place where he enters upon the railway.

(3) A railway servant giving such permission as is mentioned in sub-section (2) must arrange for the separation of the person suffering from the disorder from other persons being or travelling upon the railway.

CHAPTER VII.

RESPONSIBILITY OF RAILWAY ADMINISTRATIONS AS CARRIERS.

72. (1) The responsibility of a railway administration for the loss, destruction, or deterioration of animals or goods delivered to the administration to be carried by railway shall, subject to the other provisions of this Act, be that of a bailee under sections 151, 152, and 161 of the Indian Contract Act, 1872.

Measure of the general responsibility of a railway administration as a carrier of animals and goods.

(2) An agreement purporting to limit that responsibility, shall, in so far as it purports to effect such limitation, be void, unless it—

(a) is in writing signed by or on behalf of the person sending or delivering to the railway administration the animals or goods, and

(b) is otherwise in a form approved by the Governor-General in Council.

(3) Nothing in the Common Law of England, or in the Carriers Act, 1865, regarding the responsibility of common carriers with respect to the carriage of animals or goods, shall affect the responsibility as in this section defined of a railway administration.

73. (1) The responsibility of a railway administration under the last foregoing section for the loss, destruction, or deterioration of animals delivered to the administration to be carried on a railway shall not, in any case, exceed, in the case of elephants or horses, five hundred rupees a head, or, in the case of "mules,"* camels, or horned cattle, fifty rupees a head, or, in the case of "donkeys,"* sheep, goats, dogs, or

Further provision with respect to the liability of a railway administration as a carrier of animals

* The words quoted have been inserted by Act IX. of 1896, s. 4.

other animals, ten rupees a head, unless the person sending or delivering them to the administration caused them to be declared or declared them, at the time of their delivery for carriage by railway, to be respectively of higher value than five hundred, fifty, or ten rupees a head, as the case may be.

(2) Where such higher value has been declared, the railway administration may charge, in respect of the increased risk, a percentage upon the excess of the value so declared over the respective sums aforesaid.

(3) In every proceeding against a railway administration for the recovery of compensation for the loss, destruction, or deterioration of any animal, the burden of proving the value of the animal and, where the animal has been injured, the extent of the injury, shall lie upon the person claiming the compensation.

74. A railway administration shall not be responsible for the loss, destruction, or deterioration of any luggage belonging to, or in charge of a passenger, unless a railway servant has booked and given a receipt therefor.

Further provision with respect to the liability of a railway administration as a carrier of luggage.

75. (1) When any articles mentioned in the second schedule are contained in any parcel or package delivered to a railway administration for carriage by railway, and the value of such articles in the parcel or package exceeds one hundred rupees, the railway administration shall not be responsible for the loss, destruction, or deterioration of the parcel or package, unless the person sending or delivering the parcel or package to the administration caused its value and contents to be declared, or declared them at the time of the delivery of the parcel or package for carriage by railway, and, if so required by the administration, paid or engaged to pay a percentage on the value so declared by way of compensation for increased risk.

Further provision with respect to the liability of a railway administration as a carrier of articles of special value.

(2) When any parcel or package of which the value has been declared under sub-section (1) has been lost or destroyed, or has deteriorated, the compensation recoverable in respect of such loss, destruction, or deterioration shall not exceed the value so declared, and the burden of proving the value so declared to have been the true value, shall, notwithstanding anything in the declaration, lie on the person claiming the compensation.

(3) A railway administration may make it a condition of carrying a parcel declared to contain any article mentioned in the second schedule, that a railway servant authorized in this behalf has been satisfied by examination or otherwise that the parcel actually contains the article declared to be therein.

76. In any suit against a railway administration for compensation for loss, destruction, or deterioration of animals or goods delivered to a railway administration for carriage by railway, it shall not be necessary for the plaintiff to prove how the loss, destruction, or deterioration was caused.

Burden of proof in suits in respect of loss of animals or goods.

77. A person shall not be entitled to a refund of an overcharge in respect of animals or goods carried by railway, or to compensation for the loss, destruction, or deterioration of animals or goods delivered to be so carried, unless his claim to the refund or compensation has been preferred in writing by him, or on his behalf, to the railway administration within six months from the date of the delivery of the animals or goods for carriage by railway.

Notification of claims to refunds of overcharges and to compensation for losses.

78. Notwithstanding anything in the foregoing provisions of this chapter, a railway administration shall not be responsible for the loss, destruction, or deterioration of any goods with respect to the description of which an account materially false has been delivered under sub-section (1) of section 58 if the loss, destruction, or deterioration is in any way brought about by the false account, nor in any case for an amount exceeding the value of the goods if such value were calculated in accordance with the description contained in the false account.

Exoneration from responsibility in case of goods falsely described.

79. Where an officer, soldier, or follower, while being or travelling as such on duty upon a railway belonging to, and worked by, the Government, loses his life, or receives any personal injury in such circumstances that, if he were not an officer, soldier, or follower being or travelling as such on duty upon the railway, compensation would be payable under Act No. XIII. of 1855, or to him, as the case may be, the form and amount of the compensation to be made in respect of the loss of his life or his injury shall, where there is any

Settlement of compensation for injuries to officers, soldiers, and followers on duty.

provision in this behalf in the military regulations to which he was immediately before his death, or is, subject, be determined in accordance with those regulations, and not otherwise.

80. Notwithstanding anything in any agreement purporting to limit the liability of a railway administration with respect to traffic while on the railway of another administration, a suit for compensation for loss of the life of, or personal injury to, a passenger, or for loss, destruction, or deterioration of animals or goods, where the passenger was or the animals or goods were booked through over the railways of two or more railway administrations, may be brought either against the railway administration from which the passenger obtained his pass or purchased his ticket, or to which the animals or goods were delivered by the consignor thereof, as the case may be, or against the railway administration on whose railway the loss, injury, destruction, or deterioration occurred.

81. [*Repealed by Act IX. of 1896, s. 5.*]

82. (1) When a railway administration contracts to carry passengers, animals, or goods partly by railway and partly by sea, a condition exempting the railway administration from responsibility for any loss of life, personal injury, or loss of or damage to animals or goods, which may happen, during the carriage by sea, from the act of God, the King's enemies, fire, accidents from machinery, boilers, and steam, and all and every other dangers and accidents of the seas, rivers, and navigation of whatever nature and kind soever, shall, without being expressed, be deemed to be part of the contract, and, subject to that condition, the railway administration shall, irrespective of the nationality or ownership of the ship used for the carriage by sea, be responsible for any loss of life, personal injury, or loss of or damage to animals or goods, which may happen during the carriage by sea, to the extent to which it would be responsible under the Merchant Shipping Act, 1854, and the Merchant Shipping Act Amendment Act, 1862, if the ship were registered under the former of those Acts, and the railway administration were owner of the ship, and not to any greater extent.

(2) The burden of proving that any such loss, injury, or damage as is mentioned in sub-section (1), happened during the carriage by sea, shall lie on the railway administration.

CHAPTER VIII.

ACCIDENTS.

Report of railway accidents.

83. When any of the following accidents occurs in the course of working a railway, namely :—

- (a) any accident attended with loss of human life, or with grievous hurt as defined in the Indian Penal Code, or with serious injury to property ;
- (b) any collision between trains of which one is a train carrying passengers ;
- (c) the derailment of any train carrying passengers, or of any part of such a train ;
- (d) any accident of a description usually attended with loss of human life, or with such grievous hurt as aforesaid, or with serious injury to property ;
- (e) any accident of other description which the Governor-General in Council may notify in this behalf in the *Gazette of India* ;

the railway administration working the railway, and, if the accident happens to a train belonging to any other railway administration, the other railway administration also, shall, without unnecessary delay, send notice of the accident to the Local Government, and to the Inspector appointed for the railway ; and the station-master nearest to the place at which the accident occurred, or, where there is no station-master, the railway servant in charge of the section of the railway on which the accident occurred, shall, without unnecessary delay, give notice of the accident to the Magistrate of the district in which the accident occurred, and to the officer in charge of the police-station within the local limits of which it occurred, or to such other Magistrate and police-officer as the Governor-General in Council appoints in this behalf.

84. The Governor-General in Council may make rules, consistent with this Act and any other enactment for the time being in force, for all or any of the following purposes, namely :—

Power to make rules regarding notices of, and inquiries into, accidents.

- (a) for prescribing the forms of the notices mentioned in the last foregoing section, and the particulars of the accident which those notices are to contain ;

(b) for prescribing the class of accidents of which notice is to be sent by telegraph immediately after the accident has occurred;

(c) for prescribing the duties of railway servants, police-officers, Inspectors, and Magistrates on the occurrence of an accident.

85. Every railway administration shall send to the Governor-General in Council a return of accidents occurring upon its railway, whether attended with personal injury or not, in such form and manner, and at such intervals of time as the Governor-General in Council directs.

86. Whenever any person injured by an accident on a railway claims compensation on account of the injury, any Court or person having, by law or consent of parties, authority to determine the claim, may order that the person injured be examined by some duly-qualified medical practitioner named in the order, and not being a witness on either side, and may make such order with respect to the costs of the examination as it or he thinks fit.

CHAPTER IX.

PENALTIES AND OFFENCES.

Forfeitures by Railway Companies.

87. If a railway company fails to comply with any requisition made under section 13, it shall forfeit to the Government the sum of two hundred rupees for the default, and a further sum of 50 rupees for every day after the first during which the default continues.

88. If a railway company moves any rolling-stock upon a railway by steam or other motive power in contravention of section 16, subsection (2), or opens or uses any railway or work in contravention of section 18, section 19, section 20, or section 21, or re-opens any railway, or uses any rolling-stock, in contravention of section 24, it shall forfeit to the Government the

sum of two hundred rupees for every day during which the motive power, railway, work, or rolling-stock is used in contravention of any of those sections.

89. If a railway company fails to comply with the provisions of section 47, sub-section (6), section 54, sub-section (2), or section 65, with respect to the books or other documents to be kept open to inspection, or conspicuously posted at stations on its railway, it shall forfeit to the Government the sum of 50 rupees for every day during which the default continues.

Penalty for not having certain documents kept or exhibited at stations under section 47, 54, or 65.

90. If a railway company fails to comply with the provisions of section 47 with respect to the making of general rules, it shall forfeit to the Government the sum of fifty rupees for every day during which the default continues.

Penalty for not making rules as required by section 47.

91. If a railway company refuses or neglects to comply with any decision of the Governor-General in Council under section 48, it shall forfeit to the Government the sum of two hundred rupees for every day during which the refusal or neglect continues.

Penalty for failure to comply with decision under section 48.

92. If a railway company fails to comply with the provisions of section 52 or section 85 with respect to the submission of any return, it shall forfeit to the Government the sum of fifty rupees for every day during which the default continues after the fourteenth day from the date prescribed for the submission of the return.

Penalty for delay in submitting returns under section 52 or 85.

93. If a railway company contravenes the provisions of section 53 or section 63, with respect to the maximum load to be carried in any wagon or truck, or the maximum number of passengers to be carried in any compartment, or the exhibition of such load on the wagon or truck, or of such number in or on the compartment, or knowingly suffers any person owning a wagon or truck passing over its railway to contravene the provisions of the former of those sections, it shall forfeit to the Government the sum of twenty rupees for every day during which either section is contravened.

Penalty for neglect of provisions of section 53 or 63 with respect to carrying capacity of rolling-stock.

94. If a railway company fails to comply with any requisition of the Governor-General in Council under section 62 for the provision and maintenance in proper order, in any train worked by it which carries passengers, of such efficient means of communication as the Governor-General in Council has approved, it shall forfeit to the Government the sum of twenty rupees for each train run in disregard of the requisition.

95. If a railway company fails to comply with the requirements of section 64 with respect to the reservation of compartments for females, or the provision of closets therein, it shall forfeit to the Government the sum of twenty rupees for every train in respect of which the default occurs.

96. If a railway company omits to give such notice of an accident as is required by section 83 and the rules for the time being in force under section 84, it shall forfeit to the Government the sum of one hundred rupees for every day during which the omission continues.

97. (1) When a railway company has, through any act or omission, forfeited any sum to the Government under the foregoing provisions of this chapter, the sum shall be recoverable by suit in the District Court having jurisdiction in the place where the act or omission, or any part thereof, occurred.

(2) The suit must be instituted with the previous sanction of the Governor-General in Council, and the plaintiff therein shall be the Secretary of State for India in Council.

(3) The Governor-General in Council may remit the whole or any part of any sum forfeited by a railway company to the Government under the foregoing provisions of this chapter.

98. Nothing in those provisions shall be construed to preclude the Government from resorting to any other mode of proceeding instead of, or in addition to such a suit as is mentioned in the last foregoing section, for the purpose of compelling a railway company to discharge any obligation imposed upon it by this Act.

Offences by Railway Servants.

99. If a railway servant whose duty it is to comply with the provisions of section 60 negligently or wilfully omits to comply therewith, he shall be punished with fine which may extend to twenty rupees.

100. If a railway servant is in a state of intoxication while on duty, he shall be punished with fine which may extend to fifty rupees, or, where the improper performance of the duty would be likely to endanger the safety of any person travelling or being upon a railway, with imprisonment for a term which may extend to one year, or with fine, or with both.

101. If a railway servant, when on duty, endangers the safety of any person—

(a) by disobeying any general rule made, sanctioned, published, and notified under this Act, or

(b) by disobeying any rule or order which is not inconsistent with any such general rule, and which such servant was bound by the terms of his employment to obey, and of which he had notice, or

(c) by any rash or negligent act or omission,

he shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to five hundred rupees, or with both.

102. If a railway servant compels, or attempts to compel, or causes, any passenger to enter a compartment which already contains the maximum number of passengers exhibited therein or thereon under section 63, he shall be punished with fine which may extend to twenty rupees.

103. If a station-master or a railway servant in charge of a section of a railway omits to give such notice of an accident as is required by section 83 and the rules for the time being in force under section 84, he shall be punished with fine which may extend to fifty rupees.

104. If a railway servant unnecessarily—

Obstructing level-crossings.

(a) allows any rolling-stock to stand across a place where the railway crosses a public road on the level, or

(b) keeps a level-crossing closed against the public.

he shall be punished with fine which may extend to twenty rupees.

105. If any return which is required by this Act is false in any particular to the knowledge of any person who signs it, that person shall be punished with fine which may extend to five hundred rupees, or with imprisonment which may extend to one year, or with both.

False returns.

Other Offences.

106. If a person requested under section 58 to give an account with respect to any goods gives an account which is materially false, he, and, if he is not the owner of the goods, the owner also, shall be punished with fine which may extend to ten rupees for every maund or part of a maund of the goods, and the fine shall be in addition to any rate or other charge to which the goods may be liable.

107. If, in contravention of section 59, a person takes with him any dangerous or offensive goods upon a railway, or tenders or delivers any such goods for carriage upon a railway, he shall be punished with fine which may extend to five hundred rupees, and shall also be responsible for any loss, injury, or damage, which may be caused by reason of such goods having been so brought upon the railway.

108. If a passenger, without reasonable and sufficient cause, makes use of, or interferes with, any means provided by a railway administration for communication between passengers and the railway servants in charge of a train, he shall be punished with fine which may extend to fifty rupees.

109. (1) If a passenger, having entered a compartment which is reserved by a railway administration for the use of another passenger, or which already contains the maximum number of passengers exhibited therein or thereon under section 63, refuses to leave it when required to do so by

Entering compartment reserved or already full, or resisting entry into a compartment not full.

any railway servant, he shall be punished with fine which may extend to twenty rupees.

(2) If a passenger resists the lawful entry of another passenger into a compartment not reserved by the railway administration for the use of the passenger resisting, or not already containing the maximum number of passengers exhibited therein or thereon under section 63, he shall be punished with fine which may extend to twenty rupees.

110. (1) If a person, without the consent of his fellow-passengers, if any, in the same compartment, **Smoking.** smokes in any compartment except a compartment specially provided for the purpose, he shall be punished with fine which may extend to twenty rupees.

(2) If any person persists in so smoking after being warned by any railway servant to desist, he may, in addition to incurring the liability mentioned in sub-section (1), be removed by any railway servant from the carriage in which he is travelling.

111. If a person, without authority in this behalf, pulls down, **Defacing public notices.** or wilfully injures, any board or document set up or posted by order of a railway administration on a railway or any rolling-stock, or obliterates or alters any of the letters or figures upon any such board or document, he shall be punished with fine which may extend to fifty rupees.

Fraudulently travelling or attempting to travel without proper pass or ticket.

112. If a person, with intent to defraud a railway administration,—

(a) enters, in contravention of section 68, any carriage on a railway, or

(b) uses or attempts to use a single pass or single ticket which has already been used on a previous journey, or, in the case of a return ticket, a half thereof which has already been so used,

he shall be punished with fine which may extend to one hundred rupees in addition to the amount of single fare for any distance which he may have travelled.

113. (1) If a passenger travels in a train without having a proper pass or a proper ticket with him, **Travelling without pass or ticket, or with insufficient pass or ticket, or beyond authorized distance.** or, being in or having alighted from a train, fails or refuses to present for examination, or to deliver up, his pass or

ticket immediately on requisition being made thereof under section 69, he shall be liable to pay, on the demand of any railway servant appointed by the railway administration in this behalf, the excess charge hereinafter in this section mentioned, in addition to the ordinary single fare for the distance which he has travelled, or where there is any doubt as to the station from which he started, the ordinary single fare from the station from which the train originally started, or, if the tickets of passengers travelling in the train have been examined since the original starting of the train, the ordinary single fare from the place where the tickets were examined, or, in case of their having been examined more than once, where last examined.

(2) If a passenger travels or attempts to travel in or on a carriage, or by a train, of a higher class than that for which he has obtained a pass or purchased a ticket, or travels in or on a carriage beyond the place authorized by his pass or ticket, he shall be liable to pay, on the demand of any railway servant appointed by the railway administration in his behalf, the excess charge hereinafter in this section mentioned, in addition to any difference between any fare paid by him and the fare payable in respect of such journey as he has made.

(3) The excess charge referred to in sub-section (1) and sub-section (2) shall,—

(a) where the passenger has, immediately after incurring the charge, and before being detected by a railway servant, notified to the railway servant on duty with the train the fact of the charge having been incurred, be one rupee, two annas, or eight annas, and

(b) in any other case, be six rupees, one rupee, or three rupees,

according as the passenger is travelling or has travelled, or has attempted to travel, in a carriage of the highest class, or in a carriage of the lowest class, or in a carriage of any other class or kind:

Provided that such excess charge shall in no case exceed,—

(a) where the liability to pay it arises under sub-section (1), the amount of the ordinary single fare which the passenger incurring the charge is liable to pay under that sub-section, or

(b) where such liability arises under sub-section (2), the amount of the difference between the fare paid by the passenger incurring the charge and the fare payable in respect of such journey as he has made.

(4) If a passenger liable to pay the excess charge and fare mentioned in sub-section (1), or the excess charge and any difference of fare mentioned in sub-section (2), fails or refuses to pay the same on demand being made therefor under one or other of those sub-sections, as the case may be, the sum payable by him shall, on application made to any Magistrate by any railway servant appointed by the railway administration in this behalf, be recovered by the Magistrate from the passenger as if it were a fine imposed on the passenger by the Magistrate, and shall, as it is recovered, be paid to the railway administration.

114. If a person sells or attempts to sell, or parts or attempts Transferring return half of to part with the possession of, "any return ticket. half"* of a return ticket in order to enable any other person to travel therewith, or purchases such half of a return ticket, he shall be punished with fine which may extend to fifty rupees, and, if the purchaser of such half of a return ticket travels or attempts to travel therewith, he shall be punished with an additional fine which may extend to the amount of the single fare for "the journey"* authorized by the ticket.

115. That portion of any fine imposed under section 112 or Disposal of fines under the last foregoing section which represents the single fare therein mentioned shall, as the fine is recovered, be paid to the railway administration before any portion of the fine is credited to the Government.

116. If a passenger wilfully alters or defaces his pass or Altering or defacing pass ticket so as to render the date, number, or any material portion thereof illegible, or ticket. he shall be punished with fine which may extend to fifty rupees.

117. (1) If a person suffering from an infectious or contagious disorder enters or travels upon a railway in contravention of section 71, sub-section (2), he, and any person Being or suffering person to travel on railway with infectious or contagious disorder. having charge of him upon the railway

* The words quoted have been inserted by Act IX. of 1896, s. 6.

when he so entered or travelled thereon, shall be punished with fine which may extend to twenty rupees, in addition to the forfeiture of any fare which either of them may have paid, and of any pass or ticket which either of them may have obtained or purchased, and may be removed from the railway by any railway servants.

(2) If any such railway servant as is referred to in section 71, sub-section (2), knowing that a person is suffering from any infectious or contagious disorder, wilfully permits the person to travel upon a railway without arranging for his separation from other passengers, he shall be punished with fine which may extend to one hundred rupees.

118. (1) If a passenger enters or leaves, or attempts to enter or leave, any carriage while the train is in motion, or elsewhere than at the side of the carriage adjoining the platform or other place appointed by the railway administration for passengers to enter or leave the carriage, or opens the side-door of any carriage while the train is in motion, he shall be punished with fine which may extend to twenty rupees.

(2) If a passenger, after being warned by a railway servant to desist, persists in travelling on the roof, steps, or footboard of any carriage, or on an engine, or in any other part of a train not intended for the use of passengers, he shall be punished with fine which may extend to fifty rupees and may be removed from the railway by any railway servant.

119. If a male person, knowing a carriage, compartment, room, or other place to be reserved by a railway administration for the exclusive use of females, enters the place without lawful excuse, or, having entered it, remains therein after having been desired by any railway servant to leave it, he shall be punished with fine which may extend to one hundred rupees, in addition to the forfeiture of any fare which he may have paid, and of any pass or ticket which he may have obtained or purchased, and may be removed from the railway by any railway servant.

Drunkenness or nuisance on a railway.

120. If a person, in any railway carriage, or upon any part of a railway,—

(a) is in a state of intoxication, or

(b) commits any nuisance or act of indecency, or uses obscene or abusive language, or

(c) wilfully and without lawful excuse, interferes with the comfort of any passenger, or extinguishes any lamp, he shall be punished with fine which may extend to fifty rupees, in addition to the forfeiture of any fare which he may have paid, and of any pass or ticket which he may have obtained or purchased, and may be removed from the railway by any railway servant.

121. If a person wilfully obstructs or impedes any railway servant in the discharge of his duty, he shall be punished with fine which may extend to one hundred rupees.

Obstructing railway servant in his duty.

122. (1) If a person unlawfully enters upon a railway, he shall be punished with fine which may extend to twenty rupees.

Trespass and refusal to desist from trespass.

(2) If a person so entering refuses to leave the railway on being requested to do so by any railway servant, or by any other person on behalf of the railway administration, he shall be punished with fine which may extend to fifty rupees, and may be removed from the railway by such servant or other person.

123. If a driver or conductor of a tramcar, omnibus, carriage, or other vehicle, while upon the premises of a railway, disobeys the reasonable directions of any railway servant or police-officer, he shall be punished with fine which may extend to twenty rupees.

Disobedience of omnibus drivers to directions of railway servants.

124. In either of the following cases, namely:—

Opening or not properly shutting gates.

(a) if a person, knowing or having reason to believe that an engine or train is approaching along a railway opens any gate set up on either side of the railway across a road, or passes or attempts to pass, or drives or takes, or attempts to drive or take, any animal, vehicle, or other thing across the railway;

(b) if, in the absence of a gatekeeper, a person omits to shut and fasten such a gate as aforesaid as soon as he and any animal, vehicle, or other thing under his charge have passed through the gate,

the person shall be punished with fine which may extend to fifty rupees.

125. (1) The owner or person in charge of any cattle straying on a railway provided with fences suitable for the exclusion of cattle shall be punished with fine which may extend to five rupees for each head of cattle, in addition to any amount which may have been recovered, or may be recoverable under the Cattle Trespass Act, 1871.

(2) If any cattle are wilfully driven, or knowingly permitted to be, on any railway otherwise than for the purpose of lawfully crossing the railway, or for any other lawful purpose, the person in charge of the cattle, or, at the option of the railway administration, the owner of the cattle, shall be punished with fine which may extend to ten rupees for each head of cattle, in addition to any amount which may have been recovered or may be recoverable under the Cattle Trespass Act, 1871.

(3) Any fine imposed under this section may, if the Court so directs, be recovered in manner provided by section 25 of the Cattle Trespass Act, 1871.

(4) The expression "public road" in sections 11 and 26 of the Cattle Trespass Act, 1871, shall be deemed to include a railway, and any railway servant may exercise the powers conferred on officers of police by the former of those sections.

(5) The word "cattle" has the same meaning in this section as in the Cattle Trespass Act, 1871.

Maliciously wrecking or attempting to wreck a train.

126. If a person unlawfully—

- (a) puts or throws upon or across any railway any wood, stone, or other matter or thing, or
- (b) takes up, removes, loosens, or displaces any rail, sleeper, or other matter or thing belonging to any railway, or
- (c) turns, moves, unlocks, or diverts any points or other machinery belonging to any railway, or
- (d) makes or shows, or hides or removes, any signal or light upon or near to any railway, or
- (e) does or causes to be done, or attempts to do, any other act or thing in relation to any railway,

with intent, or with knowledge that he is likely, to endanger the safety of any person travelling or being upon the railway, he shall be punished with transportation for life, or with imprisonment for a term which may extend to ten years.

127. If a person unlawfully throws or causes to fall or strike at, against, into, or upon any rolling-stock forming part of a train, any wood, stone, or other matter or thing, with intent, or with knowledge that he is likely, to endanger the safety of any person being in or upon such rolling-stock, or in or upon any other rolling-stock forming part of the same train, he shall be punished with transportation for life, or with imprisonment for a term which may extend to ten years.

128. If a person, by any unlawful act, or by any wilful omission or neglect, endangers or causes to be endangered the safety of any person travelling or being upon any railway, or obstructs or causes to be obstructed, or attempts to obstruct, any rolling-stock upon any railway, he shall be punished with imprisonment for a term which may extend to two years.

129. If a person rashly or negligently does any act, or omits to do what he is legally bound to do, and the act or omission is likely to endanger the safety of any person travelling or being upon a railway, he shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

130. (1) If a minor under the age of twelve years is, with respect to any railway, guilty of any of the acts or omissions mentioned or referred to in any of the four last foregoing sections, he shall be deemed, notwithstanding anything in section 82 or section 83 of the Indian Penal Code, to have committed an offence, and the Court convicting him may, if it thinks fit, direct that the minor, if a male, shall be punished with whipping, or may require the father or guardian of the minor to execute, within such time as the Court may fix, a bond binding himself, in such penalty as the Court directs, to prevent the minor from being again guilty of any of those acts or omissions.

(2) The amount of the bond, if forfeited, shall be recoverable by the Court as if it were a fine imposed by itself.

(3) If a father or guardian fails to execute a bond under subsection (1) within the time fixed by the Court, he shall be punished with fine which may extend to fifty rupees.

Procedure.

131. (1) If a person commits any offence mentioned in section 100, 101, 119, 120, 121, 126, 127, 128, or 129, or in section 130, sub-section (1), he may be arrested, without warrant or other written authority, by any railway servant or police-officer, or by any other person whom such servant or officer may call to his aid.

(2) A person so arrested shall, with the least possible delay, be taken before a Magistrate having authority to try him, or commit him for trial.

132. (1) If a person commits any offence under this Act, other than an offence mentioned in the last foregoing section, or fails or refuses to pay any excess charge or other sum demanded under section 113, and there is reason to believe that he will abscond, or his name and address are unknown, and he refuses on demand to give his name and address, or there is reason to believe that the name or address given by him is incorrect, any railway servant or police-officer, or any other person whom such railway servant or police-officer may call to his aid, may, without warrant or other written authority, arrest him.

(2) The person arrested shall be released on his giving bail, or, if his true name and address are ascertained, on his executing a bond without sureties, for his appearance before a Magistrate when required.

(3) If the person cannot give bail, and his true name and address are not ascertained, he shall, with the least possible delay, be taken before the nearest Magistrate having jurisdiction.

(4) The provisions of Chapters XXXIX. and XLII. of the Code of Criminal Procedure, 1882, shall, so far as may be, apply to bail given, and bonds executed, under this section.

133. No Magistrate other than a Presidency Magistrate, or Magistrates having jurisdiction under Act. than a Magistrate whose powers are not less than those of a Magistrate of the second class, shall try any offence under this Act.

134. (1) Any person committing any offence against this Act or any rule thereunder shall be triable for such offence in any place in which
Place of trial.

he may be, or which the Local Government may notify in this behalf, as well as in any other place in which he might be tried under any law for the time being in force.

(2) Every notification under sub-section (1) shall be published in the local official Gazette, and a copy thereof shall be exhibited for the information of the public in some conspicuous place at each of such railway stations as the Local Government may direct.

CHAPTER X.

SUPPLEMENTAL PROVISIONS.

135. Notwithstanding anything to the contrary in any enactment, or in any agreement or award based on any enactment, the following rules shall regulate the levy of taxes in respect of railways, and from railway administrations in aid of the funds of local authorities, namely :—

(1) A railway administration shall not be liable to pay any tax in aid of the funds of any local authority, unless the Governor-General in Council has, by notification in the official Gazette, declared the railway administration to be liable to pay the tax.

(2) While a notification of the Governor-General in Council under clause (1) of this section is in force, the railway administration shall be liable to pay to the local authority either the tax mentioned in the notification, or, in lieu thereof, such sum, if any, as an officer appointed in this behalf by the Governor-General in Council may, having regard to all the circumstances of the case, from time to time determine to be fair and reasonable.

(3) The Governor-General in Council may, at any time, revoke or vary a notification under clause (1) of this section.

(4) Nothing in this section is to be construed as debarring any railway administration from entering into a contract with any local authority for the supply of water or light, or for the scavenging of railway premises, or for any other service which the local authority may be rendering, or be prepared to render, within any part of the local area under its control.

(5) "Local authority" in this section means a local authority as defined in the General Clauses Act, 1887, and includes any authority legally entitled to, or entrusted with, the control or manage-

ment of any fund for the maintenance of watchmen, or for the conservancy of a river.

136. (1) None of the rolling-stock, machinery, plant, tools, fittings, materials, or effects used or provided by a railway administration for the purpose of the traffic on its railway, or of its stations or workshops, shall be liable to be taken in execution of any decree or order of any Court "or of any local authority or person having by law power to attach or distrain property or otherwise to cause property to be taken in execution,"* without the previous sanction of the Governor-General in Council.

(2) Nothing in sub-section (1) is to be construed as affecting the authority of any Court to attach the earnings of a railway in execution of a decree or order.

Railway servants to be public servants for the purposes of Chapter IX. of the Indian Penal Code.

137. (1) Every railway servant shall be deemed to be a public servant for the purposes of Chapter IX. of the Indian Penal Code.

(2) In the definition of "legal remuneration" in section 161 of that Code, the word "Government" shall, for the purposes of sub-section (1), be deemed to include any employer of a railway servant as such.

(3) A railway servant shall not—

(a) purchase or bid for, either in person or by agent, in his own name or in that of another, or jointly or in shares with others, any property put up to auction under section 55 or section 56, or

(b) in contravention of any direction of the railway administration in this behalf, engage in trade.

(4) Notwithstanding anything in section 21 of the Indian Penal Code, a railway servant shall not be deemed to be a public servant for any of the purposes of that Code except those mentioned in sub-section (1).

138. If a railway servant is discharged or suspended from his office, or dies, absconds, or absents himself, and he or his wife or widow, or any of his family or representatives, refuses or neglects, after notice in writing

Procedure for summary delivery to railway administration of property detained by a railway servant.

* The portion quoted has been inserted by Act IX. of 1896, s. 7.

for that purpose, to deliver up to the railway administration or to a person appointed by the railway administration in this behalf, any station, dwelling-house, office, or other building, with its appurtenances, or any books, papers, or other matters, belonging to the railway administration, and in the possession or custody of such railway servant at the occurrence of any such event as aforesaid, any Magistrate of the first class may, on application made by or on behalf of the railway administration, order any police-officer, with proper assistance, to enter upon the building, and remove any person found therein, and take possession thereof, or to take possession of the books, papers, or other matters, and to deliver the same to the railway administration or a person appointed by the railway administration in that behalf.

139. Any notice, determination, direction, requisition, appointment, expression of opinion, approval, or sanction to be given or signified on the part of the Governor-General in Council, for any of the purposes of, or in relation to, this Act, or any of the powers or provisions therein contained, shall be sufficient and binding, if in writing signed by a Secretary, Deputy Secretary, Under-Secretary, or Assistant Secretary, to the Government of India, or by any other officer or servant authorized to act on behalf of the Governor-General in Council in respect of the matters to which the same may relate, and the Governor-General in Council shall not in any case be bound in respect of any of the matters aforesaid unless by some writing signed in manner aforesaid.

140. Any notice or other document required or authorized by this Act to be served on a railway administration may be served, in the case of a railway administered by the Government or a Native State, on the Manager, and, in the case of a railway administered by a railway company, on the Agent in India of the railway company—

- (a) by delivering the notice or other document to the Manager or Agent, or
- (b) by leaving it at his office, or
- (c) by forwarding it by post in a prepaid letter addressed to the Manager or Agent at his office, and registered under Part III. of the Indian Post Office Act, 1866.

141. Any notice or other document required or authorized by this Act to be served on any person by a railway administration may be served—

- (a) by delivering it to the person, or
- (b) by leaving it at the usual or last-known place of abode of the person, or
- (c) by forwarding it by post in a prepaid letter addressed to the person at his usual or last-known place of abode, and registered under Part III. of the Indian Post Office Act, 1806.

142. Where a notice or other document is served by post, it shall be deemed to have been served at the time when the letter containing it would be delivered in the ordinary course of post, and in proving such service it shall be sufficient to prove that the letter containing the notice or other document was properly addressed and registered.

143. (1) A rule under section 22, section 34, or section 84, of the cancellation, rescission, or variation of a rule under any of those sections, or under section 47, sub-section (4), shall not take effect until it has been published in the *Gazette of India*.

(2) Where any rule made under this Act, or the cancellation, rescission, or variation of any such rule, is required by this Act to be published in the *Gazette of India*, it shall, besides being so published, be further notified to persons affected thereby in such manner as the Governor-General in Council, by general or special order, directs.

(3) The Governor-General in Council may cancel or vary any rule made by him under this Act.

144. (1) The Governor-General in Council may, by notification in the *Gazette of India*, invest, absolutely or subject to conditions, any Local Government with any of the powers or functions of the Governor-General in Council under this Act with respect to any railway, and may, by that or a like notification, declare what Local Government shall, for the purposes of the exercise of powers or functions so conferred, be deemed to be the Local Government in respect of the railway.

(2) The provisions of section 139 with respect to proceedings of the Governor-General in Council shall, so far as they can be made applicable, apply to proceedings of a Local Government exercising the powers, or discharging the functions, of the Governor-General in Council in pursuance of a notification under sub-section (1).

145. (1) The Manager of a railway administered by the Government or a Native State, and the Agent in India of a railway administered by a railway company, may, by instrument in writing, authorize any railway servant or other person to act for or represent him in any proceeding before any Civil, Criminal, or other Court.

(2) A person authorized by a Manager or Agent to conduct prosecutions on behalf of a railway administration shall, notwithstanding anything in section 495 of the Code of Criminal Procedure, 1882, be entitled to conduct such prosecutions without the permission of the Magistrate.

146. The Governor-General in Council may, by notification in the *Gazette of India*, extend this Act to any portion thereof to any tramway worked by steam or other mechanical power.

147. The Governor-General in Council may, by a like notification, exempt any railway from any of the provisions of this Act.

148. (1) For the purposes of section 3, clauses (5), (6), and (7), and sections 4 to 19 (both inclusive), the definitions of "railway" 47 to 52 (both inclusive), 59, 79, 83 to 92 (both inclusive), 96, 97, 98, 100, 101, 103, 104, 107, 111, 122, 124 to 132 (both inclusive), 134 to 138 (both inclusive), 140, 141, 144, 145, and 147, the word "railway," whether it occurs alone or as a prefix to another word, has reference to a railway or portion of a railway under construction, and to a railway or portion of a railway not used for the public carriage of passengers, animals, or goods, as well as to a railway falling within the definition of that word in section 3, clause (4).

(2) For the purposes of sections 5, 21, 83, 100, 101, 103, 104, 121, 122, 125, and 137, sub-sections (1), (2), and (4), and

section 138, the expression "railway servant" includes a person employed upon a railway in connection with the service thereof by a person fulfilling a contract with the railway administration.

149. In sections 194 and 195 of the Indian Penal Code, for Amendment of the Indian the words, "by this Code or the law of Penal Code. England," the words, "by the law of British India or England," shall be substituted.

150. For that portion of the preamble to the Sindh-Pishin Amendment of the Sindh- Railway Act, 1887, which begins with Pishin Railway Act, 1887. the words, "so far as it applies," and ends with the words, "in its entirety," the words, "should apply in its entirety to that part of the Sindh-Pishin Section of the North-Western Railway which lies beyond the Province of Sindh," shall be substituted.

THE FIRST SCHEDULE.*

ENACTMENTS REPEALED.

(See section 2.)

Number and year.	Title.	Extent of repeal.
<i>Acts of the Governor-General in Council.</i>		
III. of 1865 ...	Carriers Act, 1865 ...	Section 7 (so far as it relates to railways) and section 10.
IV. of 1879 ...	Indian Railway Act, 1879 ...	The whole.
IV. of 1883 ...	Indian Railway Act, 1883 ...	The whole.
XI. of 1886 ...	Indian Tramways Act, 1886 ...	Section 49.
<i>Act of the Lieutenant-Governor of Bengal in Council.</i>		
II. of 1882 ...	Bengal Embankment Act, 1882.	Section 16, and in section 17 the proviso to the first paragraph of that section, the words, "or under the section last preceding," and the words, "or railroad," wherever they occur.

* So much of it as related to Act XX. of 1886, has been repealed by Act XIII. of 1898.

THE SECOND SCHEDULE.

ARTICLES TO BE DECLARED AND INSURED.

(See section 75.)

- (a) Gold and silver, coined or uncoined, manufactured or unmanufactured ;
 - (b) plated articles ;
 - (c) cloths and tissue and lace of which gold or silver forms part, not being the uniform or part of the uniform of an officer, soldier, sailor, police-officer, or person enrolled as a volunteer under the Indian Volunteers Act, 1869, or of any public officer, british or foreign, entitled to wear uniform ;
 - (d) pearls, precious stones, jewellery, and trinkets ;
 - (e) watches, clocks, and timepieces of any description ;
 - (f) Government securities ;
 - (g) Government stamps ;
 - (h) bills of exchange, hundis, promissory-notes, bank-notes, and orders or other securities for payment of money ;
 - (i) maps, writings, and, title-deeds ;
 - (j) paintings, engravings, lithographs, photographs, carvings, sculpture, and other works of art ;
 - (k) art-pottery and all articles made of glass, china, or marble ;
 - (l) silks in a manufactured or unmanufactured state, and whether wrought up or not wrought up with other materials ;
 - (m) shawls ;
 - (n) lace and furs ;
 - (o) opium ;
 - (p) ivory, ebony, coral, and sandalwood ;
 - (q) musk, sandalwood oil, and other essential oils used in the preparation of *it* or other perfume ;
 - (r) musical and scientific instruments ;
 - (s) any article of special value which the Governor-General in Council may, by notification in the *Gazette of India*, add to this schedule.
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ACT NO. IV. OF 1909

(The Whipping Act, 1909).

RECEIVED G.-G'S ASSENT ON THE 22ND MARCH 1909.

An Act to consolidate and amend the Law relating to the Punishment of Whipping.

WHEREAS it is expedient to consolidate and amend the law relating to the punishment of whipping; it is hereby enacted as follows:—

Short title and extent.

1. (1) This Act may be called the Whipping Act, 1909; and

(2) It extends to the whole of British India, inclusive of British Baluchistan and the Santhal Parganas.

2. In addition to the punishments described in section 53 of the Indian Penal Code,* offenders are also liable to the punishment of whipping.

Offences punishable with whipping in lieu of other punishment.

3. Whoever commits any of the following offences, namely —

- (a) theft, as defined in section 378 of the Indian Penal Code* other than theft by a clerk or servant of property in possession of his master;
- (b) theft in a building, tent, or vessel, as defined in section 380 of the said Code;
- (c) theft after preparation for causing death or hurt, as defined in section 382 of the said Code;
- (d) lurking house-trespass or house-breaking, as defined in sections 443 and 445 of the said Code, in order to the committing of any offence punishable with whipping under this section;

* Act XLV. of 1860.

(e) lurking house-trespass by night or house-breaking by night, as defined in sections 444 and 446 of the said Code, in order to the committing of any offence punishable with whipping under this section, may be punished with whipping in lieu of any punishment to which he may for such offence be liable under the said Code.

Offences punishable with whipping in lieu of or in addition to other punishment.

4. Whoever—

- (a) abets, commits, or attempts to commit, rape as defined in section 375 of the Indian Penal Code ;*
- (b) compels, or induces any person by fear of bodily injury, to submit to an unnatural offence as defined in section 377 of the said Code ;
- (c) voluntarily causes hurt in committing or attempting to commit robbery as defined in section 390 of the said Code ;
- (d) commits dacoity as defined in section 391 of the said Code,

may be punished with whipping in lieu of, or in addition to, any other punishment to which he may, for such offence, abetment, or attempt, be liable under the said Code.

Juvenile offenders when punishable with whipping.

5. Any juvenile offender who abets, commits, or attempts to commit—

- (a) any offence punishable under the Indian Penal Code, except offences specified in Chapter VI. and in sections 153A and 505 of that Code, and offences punishable with death, or
- (b) any offence punishable under any other law with imprisonment, which the Governor-General in Council may, by notification in the *Gazette of India*, specify in this behalf,

may be punished with whipping in lieu of any other punishment to which he may, for such offence, abetment, or attempt, be liable.

Explanation.—In this section the expression “juvenile offender” means an offender whom the Court, after making such

* Act XLV. of 1860.

enquiry (if any) as may be deemed necessary, shall find to be under sixteen years of age, the finding of the Court in all cases being final and conclusive.

6. Whenever any Local Government has, by notification in Special provision as to the official Gazette, declared the punishment with whipping visions of this section to be in force in any frontier district or any wild tract of country within the jurisdiction of such Local Government, any person who, in such district or tract of country, after such notification as aforesaid, commits any offence punishable under the Indian Penal Code with imprisonment for three years or upwards, may be punished with whipping in lieu of any other punishment to which he may be liable under the said Code.

7. To section 392, sub-section (2), of the Code of Criminal Amendment of section 392, Procedure, 1898 ;* the words, "and, Act V., 1898. in the case of a person under sixteen years of age, it shall not exceed fifteen stripes," shall be added.

8. The enactments mentioned in the Schedule are hereby Repeals. repealed to the extent specified in the fourth column thereof.

* Act V. of 1898.

THE SCHEDULE.

(See section 8.)

ENACTMENTS REPEALED.

1	2	3	4
Year.	No.	Subject or short title.	Extent of repeal.
<i>Acts of the Governor-General in Council.</i>			
1864	VI.	The Whipping Act, 1864.	So much as is unrepealed.
1895	III.	The Indian Criminal Law Amendment Act, 1895.	Section 5.
1898	V.	The Code of Criminal Procedure, 1898.	The words "whipping (if specially empowered)" in sub-section (1) and sub-section (3) of section 32. The words and figures, "(1) Power to pass sentences of whipping, section 32," under the heading "Powers with which a Magistrate of the second class may be invested" in Schedule IV.
1898	XIII.	The Burma Laws Act, 1898.	Section 4, sub-section (3), clause (b), and the Second Schedule.
1900	V.	The Whipping Act, 1900.	The whole Act.

THE INDIAN EVIDENCE ACT, 1872. (Act No. I. of 1872.)

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THE INDIAN EVIDENCE ACT, (NO. I. OF 1872).*

(RECEIVED G -G.'S ASSENT ON THE 15TH MARCH 1872.)

WHEREAS it is expedient to consolidate, define, and amend
the Law of Evidence ; It is hereby enacted as follows :—
Preamble.

PART I.

RELEVANCY OF FACTS.

CHAPTER I.

PRELIMINARY.

1. This Act may be called “The Indian Evidence Act,
1872 :”
Short title :

It extends to the whole of British India, and applies
to all judicial proceedings in or before any Court, including Courts-mar-
Extent :

* For the Statement of Objects and Reasons, see *Gazette of India*, 1868. p. 1574 ; for the Draft or Preliminary Report of the Select Committee dated 31st March 1871, see *ibid*, 1871, Pt. V., p. 273. and for the Second Report of the Select Committee dated the 30th January 1872, see *ibid*, 1872, Pt. V., p. 34 ; for Discussions in Council, see *ibid*, 1868, Supplement, pp. 1060 and 1209 ; *ibid*, 1871, Extra Supplement, p. 42, and Supplement, p. 1641, and *ibid*, 1872, pp. 136 and 230

Act I. of 1872 has been declared in force in Upper Burma generally except the Shan States (with an addition) by Act XIII. of 1898, s. 4 ; in the Hill District of Arakan by the Arakan Hill District Laws Regulation (IX. of 1874), s. 3 ; in British Baluchistan, by the British Baluchistan Laws Regulation (I. of 1890), s. 3 ; in the Santhal Parganas, by the Santhal Parganas Settlement Regulation (III. of 1872), as amended by Reg. III. of 1899, s. 3 ; in Angul and the Khondmals, by the Angul District Regulation (I. of 1894), s. 3 ; in the Kachin Hill-tracts, as regards Hill-tribes, by the Kachin Hill District Regulation (I. of 1895), s. 3 ; in the Chin Hills, as regards Hill-tribes, by the Chin Hills Regulation (V. of 1896), s. 3 ; and in the Chittagong Hill-tracts by Regulation I. of 1900, s. 4 ; also, by notification under s. 3 (a) of the Scheduled Districts Act (XIV. of 1874), in the following Scheduled Districts, namely : The Districts of Hazaribagh, Lohardaga. and Manbhum, and Pargana Dalbhum, and the Kolhan in the District of Singhbhum (see *Gazette of India*, 1881, Pt. I., p. 504) ; and in the North-Western Provinces Tarai (see *ibid*, 1876,

tial,* but not to affidavits† presented to any Court or officer, nor to proceedings before an arbitrator :

Commencement of Act. And it shall come into force on the first day of September 1872.

Repeal of enactments. 2. On and from that day, the following laws shall be repealed:—

- (1) all rules of evidence not contained in any Statute, Act, or Regulation in force in any part of British India :
- (2) all such rules, laws and regulations as have acquired the force of law under the twenty-fifth section of "The Indian Councils Act, 1861,"‡ in so far as they relate to any matter herein provided for; and
- (3) the enactments mentioned in the Schedule hereto, to the extent specified in the third column of the said Schedule :

But nothing herein contained shall be deemed to affect any provision of any Statute, Act, or Regulation in force in any part of British India, and not hereby expressly repealed.

3. In this Act, the following words and expressions are used in the following senses unless a contrary intention appears from the context:—

Interpretation-clause.

Pt. I., 505). The District of Lohardaga included at this time the present District of Palamau, which was separated in 1894.

So much of this Act as relates to the General Clauses Act (I. of 1863) was repealed by the General Clauses Act (X. of 1897).

* But see the Army Act (Stat. 44 & 45 Vict., c. 53), s. 127, which is as follows:—

"A Court-martial under this Act shall not, as respects the conduct of its proceedings, or the reception or rejection of evidence, or as respects any other matter or thing whatsoever be subject to the provisions of the Indian Evidence Act, 1872, or to any Act, law, or ordinance of any Legislature whatsoever other than the Parliament of the United Kingdom."

Act I. of 1872 is (subject to such modifications as the Governor-General in Council may direct) applicable to all proceedings before Indian Marine Courts.—See the Indian Marine Act (XIV. of 1847), s. 63.

† The Civil Procedure Code regulates matters to which affidavits are confined.—See Act V. of 1908, ss. 139 and 141, and rr. 1-3 of O. XIX. (First Schedule). See also the Code of Criminal Procedure (Act V. of 1898), s. 539.

‡ Stat. 24 and 25 Vict., c. 67.

“ Court ” includes all Judges* and Magistrates,† and all persons, except arbitrators, legally authorized to take evidence.

“ Fact. ”

“ Fact ” means and includes—

(1) any thing, state of things, or relation of things capable of being perceived by the senses ;

(2) any mental condition of which any person is conscious.

Illustrations.

(a.) That there are certain objects arranged in a certain order in a certain place is a fact.

(b.) That a man heard or saw something is a fact.

(c.) That a man said certain words is a fact.

(d.) That a man holds a certain opinion, has a certain intention, acts in good faith or fraudulently, or uses a particular word in a particular sense, or is or was, at a specified time, conscious of a particular sensation, is a fact.

(e.) That a man has a certain reputation is a fact.

One fact is said to be “ relevant ” to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts.

The expression “ facts in issue ” means and includes any fact from which, either by itself, or in connection with other facts, the existence, non-existence, nature, or extent of any right, liability, or disability, asserted or denied in any suit or proceeding, necessarily follows.

Explanation.—Whenever, under the provisions of the Law‡ for the time being in force relating to civil procedure, any Court records an issue of fact, the fact to be asserted or denied in the answer to such issue is a fact in issue.§

* Cf. the Code of Civil Procedure (Act V. of 1908), s. 2 (8), the Indian Penal Code (Act XLV. of 1860), s. 19, and, as to “ District Judge,” the General Clauses Act (X. of 1897), s. 3 (15).

† Cf. the General Clauses Act (X. of 1897), s. 3 (31), and the Code of Criminal Procedure (Act V. of 1898), s. 3 (2).

‡ See now the Code of Civil Procedure (Act V. of 1908).

§ With reference to the settlement of issues, see the Code of Civil Procedure (Act V. of 1908), O. XIV. (First Schedule), rr. 1-7

Illustrations.

A is accused of the murder of B.

At his trial the following facts may be in issue :—

that A caused B's death ;

that A intended to cause B's death ;

that A had received grave and sudden provocation from B ;

that A, at the time of doing the act which caused B's death, was, by reason of unsoundness of mind, incapable of knowing its nature.

“ Document ”* means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

Illustrations.

A writing† is a document :

Words printed, lithographed, or photographed are documents :

A map or plan is a document :

An inscription on a metal plate or stone is a document :

A caricature is a document.

“ Evidence. ”

“ Evidence ” means and includes—

(1) all statements which the Court permits or requires to be made before it by witnesses in relation to matters of fact under enquiry :

such statements are called oral evidence ;

(2) all documents produced for the inspection of the Court :

such documents are called documentary evidence.

A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

* Cf. s. 29 of the Indian Penal Code (Act XLV. of 1860) and s. 3 (16) of the General Clauses Act (X. of 1897).

† Cf. definition of “ written,” s. 2, Act XIV. of 1882 (the definition is not given in the present Code, Act V., 1908), and “ writing,” s. 3 (58), the General Clauses Act (X. of 1897), and of both in s. 21, the Indian Stamp Act (I. of 1879), as modified up to 1st November 1895, as published by the Legislative Department.

See also “ write ” in s. 4 of the Inventions and Designs Act (V. of 1888).

A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

“ Disproved. ”

A fact is said not to be proved when it is neither proved nor disproved.

“ Not proved. ”

4. Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved unless and until it is disproved, or may call for proof of it.

“ May presume. ”

Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved unless and until it is disproved.

“ Shall presume. ”

When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.

“ Conclusive proof. ”

CHAPTER II.

OF THE RELEVANCY OF FACTS.

5. Evidence may be given, in any suit or proceeding, of the existence or non-existence of every fact in issue and relevant facts, and of such other facts as are hereinafter declared to be relevant, and of no others.

Explanation.—This section shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the Law* for the time being in force relating to civil procedure.

Illustrations.

(a.) A is tried for the murder of B by beating him with a club with the intention of causing his death ;

At A's trial, the following facts are in issue :—

* See now Act V. of 1908.

- A's beating B with the club ;
- A's causing B's death by such beating ;
- A's intention to cause B's death.

(b) A suitor does not bring with him, and have in readiness for production at the first hearing of the case, a bond on which he relies. The section does not enable him to produce the bond or prove its contents at a subsequent stage of the proceedings, otherwise than in accordance with the conditions prescribed by the Code of Civil Procedure.*

6. Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place, or at different times and places.

Illustrations.

(a.) A is accused of the murder of B by beating him. Whatever was said or done by A or B, or by the bystanders, at the beating, or so shortly before or after it, as to form part of the transaction, is a relevant fact.

(b.) A is accused of waging war against the Queen by taking part in an armed insurrection in which property is destroyed, troops are attacked, and gaols are broken open. The occurrence of these facts is relevant as forming part of the general transaction, though A may not have been present at all of them.

(c.) A sues B for a libel contained in a letter forming part of a correspondence. Letters between the parties relating to the subject out of which the libel arose, and forming part of the correspondence in which it is contained, are relevant facts, though they do not contain the libel itself.

(d.) The question is, whether certain goods ordered from B were delivered to A. The goods were delivered to several intermediate persons successively. Each delivery is a relevant fact.

7. Facts which are the occasion, cause, or effect, immediate or otherwise, of relevant facts or facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant.

Illustrations.

(a.) The question is, whether A robbed B :

The facts, that, shortly before the robbery, B went to a fair with money in his possession, and that he showed it, or mentioned the fact that he had it to third persons, are relevant.

* See now Act V. of 1908.

(b) The question is, whether A murdered B.

Marks on the ground produced by a struggle at or near the place where the murder was committed are relevant facts.

(c.) The question is, whether A poisoned B.

The state of B's health before the symptoms ascribed to poison, and habits of B known to A, which afforded an opportunity for the administration of poison, are relevant facts.

Motive, preparation, and previous or subsequent conduct.

8. Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein, or relevant thereto, and the conduct of any person, and offence against whom is the subject of any proceeding, is relevant, if such conduct influences, or is influenced by, any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Explanation 1.—The word “conduct” in this section does not include statements unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2.—When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.

Illustrations.

(a) A is tried for the murder of B :

The facts that A murdered C, that B knew that A had murdered C, and that B had tried to extort money from A by threatening to make his knowledge public, are relevant.

(b.) A sues B upon a bond for the payment of money. B denies the making of the bond.

The fact, that, at the time when the bond was alleged to be made, B required money for a particular purpose is relevant.

(c.) A is tried for the murder of B by poison :

The fact, that, before the death of B, A procured poison similar to that which was administered to B, is relevant.

(d.) The question is, whether a certain document is the will of A :

The facts, that, not long before the date of the alleged will, A made inquiry into matters to which the provisions of the alleged will relate; that

he consulted vakils in reference to making the will, and that he caused drafts of other wills to be prepared, of which he did not approve, are relevant.

(e.) A is accused of a crime :

The facts, that, either before, or at the time of, or after, the alleged crime, A provided evidence which would tend to give to the facts of the case an appearance favourable to himself, or that he destroyed or concealed evidence, or prevented the presence, or procured the absence, of persons who might have been witnesses, or suborned persons to give false evidence respecting it, are relevant.

(f.) The question is, whether A robbed B :

The facts, that, after B was robbed, C said in A's presence—"The police are coming to look for the man who robbed B," and that, immediately afterwards, A ran away, are relevant.

(g.) The question is, whether A owes B rupees 10,000 :

The facts, that A asked C to lend him money, and that D said to C in A's presence and hearing "I advise you not to trust A, for he owes B 10,000 rupees," and that A went away without making any answer, are relevant facts :

(h.) The question is, whether A committed a crime :

The fact, that A absconded after receiving a letter warning him that inquiry was being made for the criminal, and the contents of the letter, are relevant.

(i.) A is accused of a crime :

The facts, that, after the commission of the alleged crime, he absconded or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant.

(j.) The question is, whether A was ravished :

The facts, that, shortly after the alleged rape, she made a complaint relating to the crime, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact, that, without making a complaint, she said that she had been ravished, is not relevant as conduct under this section, though it may be relevant—

as a dying declaration under section 32, clause (1), or
as corroborative under section 157.

(k.) The question is, whether A was robbed :

The fact, that, soon after the alleged robbery, he made a complaint relating to the offence, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact, that he said he had been robbed without making any complaint, is not relevant as conduct under this section, though it may be relevant—

as a dying declaration under section 32, clause (1), or
as corroborative evidence under section 157.

9. Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which established the identity of any thing or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant, in so far as they are necessary for that purpose.

Illustrations.

(a.) The question is, whether a given document is the will of A :

The state of A's property and of his family at the date of the alleged will may be relevant facts.

(b) A sues B for a libel imputing disgraceful conduct to A ; B affirms that the matter alleged to be libellous is true :

The position and relations of the parties at the time when the libel was published may be relevant facts as introductory to the facts in issue.

The particulars of a dispute between A and B about a matter unconnected with the alleged libel are irrelevant, though the fact that there was a dispute may be relevant if it affected the relations between A and B.

(c) A is accused of a crime :

The fact that, soon after the commission of the crime, A absconded from his house, is relevant, under section 8, as conduct subsequent to, and affected by, facts in issue.

The fact, that, at the time when he left home, he had sudden and urgent business at the place to which he went, is relevant as tending to explain the fact that he left home suddenly.

The details of the business on which he left are not relevant, except in so far as they are necessary to show that the business was sudden and urgent.

(d.) A sues B for inducing C to break a contract of service made by him with A. C, on leaving A's service, says to A " I am leaving you, because B has made me a better offer : " This statement is a relevant fact as explanatory of C's conduct, which is relevant as a fact in issue.

(e.) A, accused of theft, is seen to give the stolen property to B, who is seen to give it to A's wife. B says, as he delivers it, " A says you are to hide this : " B's statement is relevant as explanatory of a fact which is part of the transaction.

(f.) A is tried for a riot, and is proved to have marched at the head of a mob :

The cries of the mob are relevant as explanatory of the nature of the transaction.

10. Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence, or an actionable wrong, anything said, done, or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well as for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

Illustrations.

Reasonable ground exists for believing that A has joined in a conspiracy to wage war against the Queen.

The facts, that B procured arms in Europe for the purpose of the conspiracy, C collected money in Calcutta for a like object, D persuaded persons to join the conspiracy in Bombay, E published writings advocating the object in view at Agra, and F transmitted from Delhi to G at Cabul the money which C had collected at Calcutta, and the contents of a letter written by H giving an account of the conspiracy, are each relevant, both to prove the existence of the conspiracy, and to prove A's complicity in it, although he may have been ignorant of all of them, and although the persons by whom they were done were strangers to him, and although they may have taken place before he joined the conspiracy, or after he left it.

When facts not otherwise relevant become relevant. **11.** Facts not otherwise relevant are relevant—

- (1) if they are inconsistent with any fact in issue or relevant fact ;
- (2) if, by themselves or in connection with other facts, they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.*

Illustrations.

(a.) The question is, whether A committed a crime at Calcutta on a certain day :

The fact, that, on that day, A was at Lahore, is relevant.

The fact, that, near the time when the crime was committed, A was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it, is relevant.

(b.) The question is, whether A committed a crime :

* 11 Bom. H. C. R. 90.

The circumstances are such that the crime must have been committed either by A, B, C, or D. Every fact which shows that the crime could have been committed by no one else, and that it was not committed by either B, C, or D, is relevant.

In suits for damages, facts tending to enable Court to determine amount, are relevant.

12. In suits in which damages are claimed, any fact which will enable the Court to determine the amount of damages which ought to be awarded is relevant.

Facts relevant when right or custom is in question. following facts are relevant:—

13. Where the question is as to the existence of any right or custom, the

(a) Any transaction by which the right or custom in question was created, claimed, modified, recognized, asserted, or denied, or which was inconsistent with its existence :

(b) Particular instances in which the right or custom was claimed, recognized, or exercised, or in which its exercise was disputed, asserted, or departed from.

Illustration.

The question is, whether A has a right to a fishery: A deed conferring the fishery on A's ancestors, a mortgage of the fishery by A's father, a subsequent grant of the fishery by A's father irreconcilable with the mortgage, particular instances in which A's father exercised the right, or in which the exercise of the right was stopped by A's neighbours, are relevant facts.

14. Facts showing the existence of any state of mind, such as intention, knowledge, good faith, state of mind, or of body or negligence, rashness, ill-will, or good-will, towards any particular person, or showing the existence of any state of body or bodily feeling, are relevant, when the existence of any such state of mind, or body, or bodily feeling is in issue or relevant.

* *Explanation 1.*—A fact relevant as showing the existence of a relevant state of mind must show that the state of mind exists, not generally, but in reference to the particular matter in question.

* This *Explanation* has been substituted for the original by the Indian Evidence Act (1872) Amendment Act (III. of 1891), s. 1 (1).

***Explanation 2.**—But, where, upon the trial of a person accused of an offence, the previous commission by the accused of an offence is relevant within the meaning of this section, the previous conviction of such person shall also be a relevant fact.†

Illustrations.

(a.) A is accused of receiving stolen goods knowing them to be stolen. It is proved that he was in possession of a particular stolen article :

The fact, that, at the same time, he was in possession of many other stolen articles, is relevant, as tending to show that he knew each and all of the articles of which he was in possession to be stolen.

‡ (b.) A is accused of fraudulently delivering to another person a counterfeit coin which, at the time when he delivered it, he knew to be counterfeit :

The fact, that, at the time of its delivery, A was possessed of a number of other pieces of counterfeit coin, is relevant.

The fact, that A had been previously convicted of delivering to another person as genuine a counterfeit coin knowing it to be counterfeit, is relevant §

(c) A sues B for damage done by a dog of B's, which B knew to be ferocious :

The facts, that the dog had previously bitten X, Y, and Z, and that they had made complaints to B, are relevant.

(d.) The question is, whether A, the acceptor of a bill of exchange, knew that the name of the payee was fictitious.

The fact, that A had accepted other bills drawn in the same manner before they could have been transmitted to him by the payee if the payee had been a real person, is relevant as showing that A knew that the payee was a fictitious person.

(e.) A is accused of defaming B by publishing an imputation intended to harm the reputation of B :

The fact of previous publications by A respecting B showing ill-will on the part of A towards B is relevant as proving A's intention to harm B's reputation by the particular publication in question.

The facts, that there was no previous quarrel between A and B, and that A repeated the matter complained of as he heard it, are relevant as showing that A did not intend to harm the reputation of B

* This *Explanation* has been substituted for the original by the Indian Evidence Act (1872) Amendment Act (III. of 1891), s. 1 (1).

† See the Code of Criminal Procedure (Act V. of 1898), s. 31.

‡ The present *Ill. (b)* has been substituted for the original by the Indian Evidence Act (1872) Amendment Act (III. of 1891), s. 1 (2).

§ Compare s. 311 of the Code of Criminal Procedure (Act V. of 1898).

(f.) A is sued by B for fraudulently representing to B that C was solvent, whereby B, being induced to trust C, who was insolvent, suffered loss :

The fact, that, at the time when A represented C to be solvent, C was supposed to be solvent by his neighbours, and by persons dealing with him, is relevant as showing that A made the representation in good faith.

(g.) A is sued by B for the price of work done by B upon a house, of which A is owner, by the order of C, a contractor.

A's defence is, that B's contract was with C :

The fact, that A paid C for the work in question is relevant as proving that A did, in good faith, make over to C the management of the work in question, so that C was in a position to contract with B on C's own account, and not as agent for A.

(h.) A is accused of the dishonest misappropriation of property which he had found, and the question is, whether, when he appropriated it, he believed in good faith that the real owner could not be found :

The fact, that public notice of the loss of the property had been given in the place where A was, is relevant as showing that A did not, in good faith, believe that the real owner of the property could not be found.

The fact, that A knew, or had reason to believe, that the notice was given fraudulently by C, who had heard of the loss of the property, and wished to set up a false claim to it, is relevant as showing that the fact that A knew of the notice did not disprove A's good faith.

(i.) A is charged with shooting at B with intent to kill him :

In order to show A's intent, the fact of A's having previously shot at B may be proved.

(j.) A is charged with sending threatening letters to B :

Threatening letters previously sent by A to B may be proved as showing the intention of the letters.

(k.) The question is, whether A has been guilty of cruelty towards B, his wife :

Expressions of their feeling towards each other shortly before or after the alleged cruelty are relevant facts.

(l.) The question is, whether A's death was caused by poison :

Statements made by A during his illness as to his symptoms are relevant facts.

(m.) The question is, what was the state of A's health at the time when an assurance on his life was effected :

Statements made by A as to the state of his health at or near the time in question are relevant facts.

(n.) A sues B for negligence in providing him with a carriage for hire not reasonably fit for use, whereby A was injured :

The fact, that B's attention was drawn on other occasions to the defect of that particular carriage, is relevant.

The fact, that B was habitually negligent about the carriages which he let to hire, is irrelevant.

(o.) A is tried for the murder of B by intentionally shooting him dead :

The fact, that A, on other occasions, shot at B, is relevant as showing his intention to shoot B.

The fact, that A was in the habit of shooting at people with intent to murder them, is irrelevant.

(p.) A is tried for a crime :

The fact, that he said something indicating an intention to commit that particular crime, is relevant.

The fact, that he said something indicating a general disposition to commit crimes of that class, is irrelevant.

15. When there is a question whether an act was accidental or intentional, "or done with a particular knowledge or intention,"* the fact, that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

Facts bearing on question whether act was accidental or intentional, or done with a particular knowledge or intention.

Illustrations.

(a.) A is accused of burning down his house in order to obtain money for which it is insured :

The facts, that A lived in several houses successively, each of which he insured, in each of which a fire occurred, and, after each of which fires, A received payment from a different insurance office, are relevant as tending to show that the fires were not accidental.

(b.) A is employed to receive money from the debtors of B. It is A's duty to make entries in a book showing the amounts received by him. He makes an entry showing that, on a particular occasion, he received less than he really did receive :

The question is, whether this false entry was accidental or intentional :

The facts, that other entries made by A in the same book are false, and that the false entry is in each case in favour of A, are relevant.

(c.) A is accused of fraudulently delivering to B a counterfeit rupee :

The question is, whether the delivery of the rupee was accidental :

The facts, that, soon before or soon after the delivery to B, A delivered counterfeit rupees to C, D, and E, are relevant as showing that the delivery to B was not accidental.

* In s. 15, the words quoted have been inserted by the Indian Evidence Act (1872) Amendment Act (III. of 1891), s. 2.

16. When there is a question whether a particular act was done, the existence of any course of business, according to which it naturally would have been done, is a relevant fact.

Illustrations.

(a.) The question is, whether a particular letter was despatched :

The facts, that it was the ordinary course of business for all letters put in a certain place to be carried to the post, and that that particular letter was put in that place, are relevant.

(b.) The question is, whether a particular letter reached A : The facts that it was posted in due course, and was not returned through the Dead Letter Office, are relevant.

ADMISSIONS.

17. An "admission" is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned.

18. Statements made by a party to the proceeding, or by an Admission—by party to agent to any such party whom the Court proceeding or his agent. regards, under the circumstances of the case, is expressly or impliedly authorized by him to make them, are admissions.

Statements made by parties to suits, suing or sued in a representative character, are not admissions unless they were made while the party making them held that character.

Statements made by—

(1) persons who have any proprietary or pecuniary interest in the subject-matter of the proceeding, and who make the statements in their character of persons so interested, or

(2) persons from whom the parties to the suit have derived their interest in the subject-matter of the suit,

are admissions if they are made during the continuance of the interest of the persons making the statements.

19. Statements made by persons whose position or liability it is necessary to prove as against any party to the suit are admissions if such statements would be relevant as against such persons in relation to such position or liability in a suit brought by or against them, and if they are made whilst the person making them occupies such position, or is subject to such liability.

Illustrations.

A undertakes to collect rents for B.

B sues A for not collecting rent due from C to B.

A denies that rent was due from C to B :

A statement by C that he owed B rent is an admission, and is a relevant fact as against A if A denies that C did owe rent to B.

20. Statements made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute are admissions.

Illustrations.

The question is, whether a horse sold by A to B is sound :

A says to B, " Go and ask C ; C knows all about it : " C's statement is an admission.

21. Admissions are relevant, and may be proved as against the person who makes them, or his representative in interest;* but they cannot be proved by, or on behalf of, the person who makes them, or by his representative in interest, except in the following cases :—

- (1) An admission may be proved by or on behalf of the person making it, when it is of such a nature that, if the person making it were dead, it would be relevant as between third persons under section 32.
- (2) An admission may be proved by or on behalf of the person making it, when it consists of a statement of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.

* 4 Suth. W. R. 148.

- (3) An admission may be proved by or on behalf of the person making it, if it is relevant otherwise than as an admission.

Illustrations.

(a.) The question between A and B is, whether a certain deed is or is not forged. A affirms that it is genuine; B that it is forged:

A may prove a statement by B that the deed is genuine, and B may prove a statement by A that the deed is forged: But A cannot prove a statement by himself that the deed is genuine, nor can B prove a statement by himself that the deed is forged.

(b.) A, the captain of a ship, is tried for casting her away.

Evidence is given to show that the ship was taken out of her proper course.

A produces a book kept by him in the ordinary course of his business showing observations alleged to have been taken by him from day to day, and indicating that the ship was not taken out of her proper course. A may prove those statements, because they would be admissible between third parties, if he were dead, under section 32, clause (2).

(c.) A is accused of a crime committed by him at Calcutta. He produces a letter written by himself, and dated at Lahore on that day, and bearing the Lahore post-mark of that day:

The statement in the date of the letter is admissible, because, if A were dead, it would be admissible under section 32, clause (2).

(d.) A is accused of receiving stolen goods, knowing them to be stolen. He offers to prove that he refused to sell them below their value:

A may prove these statements, though they are admissions, because they are explanatory of conduct influenced by facts in issue.

(e.) A is accused of fraudulently having in his possession counterfeit coin which he knew to be counterfeit.

He offers to prove that he asked a skilful person to examine the coin, as he doubted whether it was counterfeit or not; and that that person did examine it, and told him it was genuine:

A may prove these facts for the reasons stated in the last-preceding illustration.

22. Oral admissions as to the contents of a document are

When oral admissions as to contents of documents are relevant. not relevant unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such document under the rules hereinafter contained, or unless the genuineness of a document produced is in question.

23. In civil cases no admission is relevant if it is made either upon an express condition that evidence of it is not to be given, or under circumstances from which the Court can infer that the parties agreed together that evidence of it should not be given.

Explanation.—Nothing in this section shall be taken to exempt any barrister, pleader, attorney, or vakil from giving evidence of any matter of which he may be compelled to give evidence under section 126.

24. A confession made by an accused person is irrelevant in a criminal proceeding if the making of the confession appears to the Court to have been caused by any inducement,* threat, or promise, having reference to the charge against the accused person, proceeding from a person in authority,† and sufficient, in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that, by making it, he would gain any advantage, or avoid any evil of a temporal nature in reference to the proceedings against him.

Confession to police-officer not to be proved.

25. No confession made to a police-officer‡ shall be proved as against a person accused of any offence.

26. No confession made by any person whilst he is in the custody of a police-officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

Explanation. §—In this section “Magistrate” does not include the head of a village discharging magisterial functions in the Presidency of Fort St. George, or in Burma or elsewhere, unless such

* For prohibition of such inducements, &c., see the Code of Criminal Procedure (Act V. of 1898), s. 343.

† 9 Bom. H. C. R. 358.

‡ In s. 25, as in force in Upper Burma, the words, “who is not a Magistrate,” shall be deemed to have been inserted after “police-officer” [see the Upper Burma Laws Act (XX. of 1886), s. 7 (1) (d).] As to statement made to a police officer investigating a case, see the Code of Criminal Procedure (Act V. of 1898), ss. 161 and 162.

§ This *Explanation* has been added to s. 26 by the Indian Evidence Act (1872) Amendment Act (III. of 1891), s. 3.

headman is a Magistrate exercising the powers of a Magistrate under the Code of Criminal Procedure, 1882.*

27. Provided that, when any fact is deposed to as discovered in consequence of information received from accused may from a person accused of any offence in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

28. If such a confession as is referred to in section 24 is made after the impression caused by any such inducement, threat, or promise has, in the opinion of the Court, been fully removed, it is relevant.

29. If such a confession is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such confession: and that evidence of it might be given against him.

30. When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other persons, as well as against the person who makes such confession.†

Explanation.‡—"Offence," as used in this section, includes the abetment of, or attempt to commit, the offence.§

* Act X of 1882.—But see now the new Code of Criminal Procedure (Act V. of 1898).

† 10 Bom. H. C. R. 499; 19 Suth. W. R. (Cr.) 23.

‡ This *Explanation* has been inserted in s. 30 by the Indian Evidence Act (1872) Amendment Act (III. of 1891), s. 4.

§ Compare *Explanation* 4 to s. 108 of the Indian Penal Code (Act XLV. of 1860).

Illustrations.

(a.) A and B are jointly tried for the murder of C. It is proved that A said, 'B and I murdered C.' The Court may consider the effect of this confession against B.

(b.) A is on his trial for the murder of C. There is evidence to show that C was murdered by A and B, and that B said, "A and I murdered C."

This statement may not be taken into consideration by the Court against A, as B is not being jointly tried.

31. Admissions are not conclusive proof of the matters admitted, but they may operate as estoppels under the provisions hereinafter contained.

Admissions not conclusive proof, but may estop.

STATEMENTS BY PERSONS WHO CANNOT BE CALLED AS WITNESSES.

32. Statements, written or verbal, of relevant facts, made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases :—

Cases in which statement of relevant fact by person who is dead or cannot be found, &c., is relevant—

(1) When the statement is made by a person as to the cause when it relates to cause of death; of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

Such statements are relevant, whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

(2) When the statement was made by such person in the or is made in course of ordinary course of business, and, in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty; or of an acknowledgment, written or signed by him, of the receipt of money, goods, securities, or property of any kind; or of a document used in commerce, written or signed by him, or of the date of a letter or other document usually dated, written, or signed by him.

(3) When the statement is against the pecuniary or proprietary or against interest of interest of the person making it, or when, maker; if true, it would expose him, or would have exposed him, to a criminal prosecution, or to a suit for damages.

(4) When the statement gives the opinion of any such person or gives opinion as to as to the existence of any public right or public right or custom, or custom or matter of public or general matters of general interest; interest, of the existence of which, if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom, or matter had arisen.

(5) When the statement relates to the existence of any relationship or relates to existence of ship "by blood, marriage, or adoption,"* relationship; between persons as to whose relationship "by blood, marriage, or adoption,"* the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised.

(6) When the statement relates to the existence of any relationship or is made in will or deed ship "by blood, marriage, or adoption"* relating to family-affairs; between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family-pedigree, or upon any tombstone, family-portrait, or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised.

or in document relating to (7) When the statement is contained transaction mentioned in section 13, clause (a); in any deed, will, or other document which relates to any such transaction as is mentioned in section 13, clause (a).

or is made by several persons and expresses feelings relevant to matter in question. (8) When the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question.

Illustrations.

(a) The question is, whether A was murdered by B; or

* In s. 32 (5) and (6), the words quoted have been inserted by the Indian Evidence Act (1872) Amendment Act (XVIII. of 1872), s. 2.

A dies of injuries received in a transaction in the course of which she was ravished. The question is, whether she was ravished by B ; or

the question is, whether A was killed by B under such circumstances that a suit would lie against B by A's widow :

Statements made by A as to the cause of his or her death, referring respectively to the murder, the rape, and the actionable wrong under consideration, are relevant facts.

(b.) The question is as to the date of A's birth :

An entry in the diary of a deceased surgeon, regularly kept in the course of business, stating that, on a given day, he attended A's mother and delivered her of a son, is a relevant fact.

(c.) The question is, whether A was in Calcutta on a given day :

A statement in the diary of a deceased solicitor, regularly kept in the course of business, that, on a given day, the solicitor attended A at a place mentioned, in Calcutta, for the purpose of conferring with him upon specified business, is a relevant fact.

(d.) The question is, whether a ship sailed from Bombay harbour on a given day :

A letter written by a deceased member of a merchant's firm, by which she was chartered, to their correspondents in London to whom the cargo was consigned, stating that the ship sailed on a given day from Bombay harbour, is a relevant fact.

(e.) The question is, whether rent was paid to A for certain land :

A letter from A's deceased agent to A, saying that he had received the rent on A's account, and held it at A's orders, is a relevant fact.

(f.) The question is, whether A and B were legally married.

The statement of a deceased clergyman that he married them under such circumstances that the celebration would be a crime is relevant.

(g.) The question is, whether A, a person who cannot be found, wrote a letter on a certain day :

The fact that a letter written by him is dated on that day is relevant.

(h.) The question is, what was the cause of the wreck of a ship :

A protest made by the captain whose attendance cannot be procured is a relevant fact.

(i.) The question is, whether a given road is a public way :

A statement by A, a deceased headman of the village, that the road was public, is a relevant fact.

(j.) The question is, what was the price of grain on a certain day in a particular market: A statement of the price, made by a deceased *bania* in the ordinary course of his business, is a relevant fact.

(k.) The question is, whether A, who is dead, was the father of B :

A statement by A that B was his son is a relevant fact.

(l.) The question is, what was the date of the birth of A :

A letter from A's deceased father to a friend announcing the birth of A on a given day is a relevant fact.

(*m.*) The question is, whether and when A and B were married :

An entry in a memorandum-book by C, the deceased father of B, of his daughter's marriage with A on a given date, is a relevant fact.

(*n.*) A sues B for a libel expressed in a painted caricature exposed in a shop window. The question is as to the similarity of the caricature and its libellous character : The remarks of a crowd of spectators on these points may be proved.

33. Evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable :*

Provided—

that the proceeding was between the same parties or their representatives in interest ;

that the adverse party in the first proceeding had the right and opportunity to cross-examine ;

that the questions in issue were substantially the same in the first as in the second proceeding.

Explanation.—A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.

STATEMENTS MADE UNDER SPECIAL CIRCUMSTANCES.

34.† Entries in books of account, regularly kept in the course of business, are relevant whenever they refer to a matter into which the Court

Entries in books of account when relevant.

* See *Queen v. Mowjan*, 20 Suth. W. R. Cr. R. 69.

† Compare s. 198 of the Indian Companies Act (VI. of 1882) and r. 17 of O. VII. (First Schedule) of the Code of Civil Procedure (Act V. of 1908) as to admissibility in evidence of certified copies of entries in Bankers' books, see s. 4 of the Bankers' Books Evidence Act (XVIII. of 1891), *infra*.

has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability.

Illustration.

A sues B for Rs. 1,000, and shows entries in his account-books showing B to be indebted to him to this amount : The entries are relevant, but are not sufficient, without other evidence, to prove the debt.

35. An entry in any public or other official book, register, or record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register, or record is kept, is itself a relevant fact.

Relevancy of entry in public record, made in performance of duty.

36. Statements of facts in issue or relevant facts, made in published maps or charts generally offered for public sale, or in maps or plans made under the authority of Government, as to matters usually represented or stated in such maps, charts, or plans, are themselves relevant facts.

Relevancy of statements in maps, charts, and plans.

37. When the Court has to form an opinion as to existence of any fact of a public nature, any statement of it, made in a recital contained in any Act of Parliament, or in any Act of the Governor-General of India in Council, or of the Governors in Council of Madras or Bombay, or of the Government appearing in the *Gazette of India*, or in the gazette of any Local Government, or in any printed paper purporting to be the *London Gazette* or the Government Gazette of any colony or possession of the Queen, is a relevant fact.

Relevancy of statement as to fact of public nature contained in certain Acts or notifications.

*This section also applies to any Act of the Lieutenant-Governor in Council of the North-Western Provinces and Oudh, the Punjab, or Burma.**

38. When the Court has to form an opinion as to a law of any country, any statement of such law contained in a book purporting to be printed or published under the authority

Relevancy of statements as to any law contained in law-books.

* To s. 37, the italicized paragraph has been added by the Indian Evidence Act (V. of 1899), s. 2.

* of the Government of such country, and to contain any such law, and any report of a ruling of the Courts of such country contained in a book purporting to be a report of such rulings, is relevant.

HOW MUCH OF A STATEMENT IS TO BE PROVED.

39. When any statement of which evidence is given forms part of a longer statement, or of a conversation or part of an isolated document, or is contained in a document which forms part of a book, or of a connected series of letters or papers, evidence shall be given of so much, and no more, of the statement, conversation, document, book, or series of letters or papers as the Court considers necessary in that particular case to the full understanding of the nature and effect of the statement, and of the circumstances under which it was made.

JUDGMENTS OF COURTS OF JUSTICE WHEN RELEVANT.

40. The existence of any judgment, order, or decree, which, by law, prevents any Court from taking cognisance of a suit, or holding a trial, is a relevant fact, when the question is whether such Court ought to take cognisance of such suit, or to hold such trial.

41. A final judgment, order, or decree of a competent Court in the exercise of probate, matrimonial, admiralty, or insolvency jurisdiction, which confers upon, or takes away from, any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person, but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

Such judgment, order, or decree, is conclusive proof—

that any legal character which it confers accrued at the time when such judgment, order, or decree came into operation;

that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment, "order, or decree"* declares it to have accrued to that person;

* In s. 41. the words quoted, wherever they occur, have been inserted by the Indian Evidence Act (1872) Amendment Act (XVIII. of 1872), s. 3

that any legal character which it takes away from any such person ceased at the time from which such judgment, "order, or decree"* declared that it had ceased or should cease ;

and that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, "order, or decree"* declares that it had been or should be his property.

42 Judgments, orders, or decrees other than those mentioned in section 31 are relevant if they relate to matters of a public nature relevant to the enquiry ; but such judgments, orders, or decrees are not conclusive proof of that which they state.†

Relevancy and effect of judgments, orders, or decrees, other than those mentioned in section 41.

Illustration.

A sues B for trespass on his land. B alleges the existence of a public right of way over the land, which A denies.

The existence of a decree in favour of the defendant, in a suit by A against C for a trespass on the same land, in which C alleged the existence of the same right of way, is relevant, but it is not conclusive proof that the right of way exists.

43. Judgments, orders, or decrees other than those mentioned in sections 40, 41, and 42, are irrelevant, unless the existence of such judgment, order, or decree, is a fact in issue, or is relevant under some other provision of this Act.

Judgments, &c., other than those mentioned in sections 40 to 42, when relevant.

Illustrations.

(a.) A and B separately sue C for a libel which reflects upon each of them. C, in each case, says that the matter alleged to be libellous is true, and the circumstances are such that it is probably true in each case, or in neither.

A obtains a decree against C for damages on the ground that C failed to make out his justification. The fact is irrelevant as between B and C.

(b.) A prosecutes B for adultery with C, A's wife.

B denies that C is A's wife, but the Court convicts B of adultery.

Afterwards, C is prosecuted for bigamy in marrying B during A's lifetime. C says that she never was A's wife.

* In s. 41, the words quoted, wherever they occur, have been inserted by the Indian Evidence Act (1872) Amendment Act (XVIII. of 1872), s. 3.

† 22 Suth. W. R. Cr. R. 365.

The judgment against B is irrelevant as against C.

(c.) A prosecutes B for stealing a cow from him. B is convicted.

A, afterwards, sues C for the cow which B had sold to him before his conviction. As between A and C, the judgment against B is irrelevant.

(d.) A has obtained a decree for the possession of land against B. C, B's son, murders A in consequence.

The existence of the judgment is relevant as showing motive for a crime.

(e.)* A is charged with theft, and with having been previously convicted of theft. The previous conviction is relevant as a fact in issue.

(f.)* A is tried for the murder of B. The fact, that B prosecuted A for libel, and that A was convicted and sentenced, is relevant under section 8 as showing the motive for the fact in issue.

44. Any party to a suit or other proceeding may show that Fraud or collusion in obtaining judgment, or incompetency of Court, may be proved. any judgment, order, or decree, which is relevant under section 40 41, or 42, and which has been proved by the adverse party, was delivered by a Court not competent to deliver it, or was obtained by fraud or collusion.

OPINIONS OF THIRD PERSONS, WHEN RELEVANT.

45.† When the Court has to form an opinion upon a point of foreign law, or of science or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science, or art, "or in questions as to identity of handwriting" or *finger impressions*, are relevant facts.

Opinions of experts.

Such persons are called experts.

Illustrations.

(a.) The question is, whether the death of A was caused by poison :

The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died are relevant.

(b.) The question is, whether A, at the time of doing a certain act, was, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law :

* To s. 43, *Ills. (e) and (f)* have been added by the Indian Evidence Act (1872) Amendment Act (III. of 1891), s. 5.

† In s. 45, the words quoted have been inserted by the Indian Evidence Act (1872) Amendment Act (XVIII. of 1872), s. 4, and the italicized words have been inserted by the Indian Evidence Act (V. of 1899), s. 3 (1).

The opinions of experts upon the question whether the symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant.

(c.) The question is, whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A :

The opinions of experts on the question whether the two documents were written by the same persons or by different persons are relevant.

46. Facts, not otherwise relevant, are relevant if they support Facts bearing upon opi- or are inconsistent with the opinions of
nions of experts. experts, when such opinions are relevant.

Illustrations.

(a.) The question is, whether A was poisoned by a certain poison :

The fact, that other persons, who were poisoned by that poison, exhibited certain symptoms which experts affirm or deny to be the symptoms of that poison is relevant.

(b) The question is, whether an obstruction to a harbour is caused by a certain sea-wall.

The fact, that other harbours similarly situated in other respects, but where there were no such sea-walls, began to be obstructed at about the same time, is relevant.

47. When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed, that it was or was not written or signed by that person, is a relevant fact.

Explanation.—A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority, and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.

Illustration.

The question is, whether a given letter is in the handwriting of A, a merchant in London.

B is a merchant in Calcutta who has written letters addressed to A, and received letters purporting to be written by him. C is B's clerk, whose duty it was to examine and file B's correspondence. D is B's broker, to whom B habitually submitted the letters purporting to be written by A for the purpose of advising with him thereon :

The opinions of B, C, and D, on the question whether the letter is in the handwriting of A, are relevant, though neither B, C, nor D ever saw A write.

48. When the Court has to form an opinion as to the existence

Opinion as to existence of of any general custom or right, the right or custom when relevant. opinions, as to the existence of such custom or right, of persons who would be likely to know of its existence if it existed, are relevant.

Explanation.—The expression, “general custom or right,” includes customs or rights common to any considerable class of persons.

Illustration.

The right of the villagers of a particular village to use the water of a particular well is a general right within the meaning of this section.

Opinion as to usages, tenets, &c., when relevant.

49. When the Court has to form an opinion as to—

the usages and tenets of any body of men or family,

the constitution and government of any religious or charitable foundation, or

the meaning of words or terms used in particular districts, or by particular classes of people,

the opinions of persons having special means of knowledge thereon, are relevant facts.

50. When the Court has to form an opinion as to the re-

Opinion on relationship of one person to another, the when relevant. opinion. expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact :

Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act,* or in prosecutions under section 494, 495, 497, or 498 of the Indian Penal Code.†

* Act IV. of 1869.

† Act XLV. of 1860.

Illustrations.

(a.) The question is, whether A and B were married : The fact, that they were usually received and treated by their friends as husband and wife, is relevant.

(b.) The question is, whether A was the legitimate son of B. The fact that A was always treated as such by members of the family is relevant.

51. Whenever the opinion of any living person is relevant, the grounds on which such opinion is based are also relevant.

Illustration.

An expert may give an account of experiments performed by him for the purpose of forming his opinion.

CHARACTER WHEN RELEVANT.

52. In civil cases the fact, that the character of any person concerned is such as to render probable or improbable any conduct imputed to him, is irrelevant except in so far as such character appears from facts otherwise relevant.

In civil cases character to prove conduct imputed, irrelevant.

53. In criminal proceedings, the fact that the person accused is of a good character is relevant.

54.* In criminal proceedings, the fact that the accused person has a bad character is irrelevant unless evidence has been given that he has a good character, in which case it becomes relevant.

Previous bad character not relevant except in reply.

Explanation 1.—This section does not apply to cases in which the bad character of any person is itself a fact in issue.

Explanation 2.—A previous conviction is relevant as evidence of bad character.

55. In civil cases, the fact, that the character of any person is such as to affect the amount of damages which he ought to receive, is relevant.

Character as affecting damages.

Explanation.—In sections 52, 53, 54, and 55, the word “character” includes both reputation and disposition; but, *except as*

* The present s. 54 has been substituted for the original by the Indian Evidence Act (1872) Amendment Act (III. of 1891), s. 6.

*provided in section 54,** evidence may be given only of general reputation and general disposition, and not of particular acts by which reputation or disposition, were shown.

PART II.—ON PROOF.

CHAPTER III.—FACTS WHICH NEED NOT BE PROVED.

Fact judicially noticeable
need not be proved.

56. No fact of which the Court will take judicial notice need be proved.

Facts of which Court must
take judicial notice.

57. The Court shall take judicial notice of the following facts:—

(1) All laws or rules having the force of law, now or heretofore in force, or hereafter to be in force, in any part of British India;

(2) all public Acts passed or hereafter to be passed by Parliament, and all local and personal Acts directed by Parliament to be judicially noticed;

(3) Articles of War for Her Majesty's Army or Navy;

(4) the course of proceeding of Parliament, and of the Councils for the purposes of making Laws and Regulations established under the Indian Councils Act† or any other law for the time being relating thereto:

Explanation.—The word "Parliament," in clauses (2) and (4), includes—

(1) the Parliament of the United Kingdom of Great Britain and Ireland;

(2) the Parliament of Great Britain:

(3) the Parliament of England:

(4) the Parliament of Scotland; and

(5) the Parliament of Ireland;

(5) the accession and the sign manual of the Sovereign for the time being of the United Kingdom of Great Britain and Ireland;

(6) all seals of which English Courts take judicial notice; the seals of all the Courts of British India, and of all Courts out of

* In the *Explanation* to s. 55, the italicized words have been inserted by the Indian Evidence Act (1872) Amendment Act (III. of 1891), s. 7.

† Stat. 24 & 25 Vict., c. 67.

British India, established by the authority of the Governor-General* or any Local Government in Council; the seals of Courts of Admiralty and Maritime Jurisdiction, and of Notaries Public; and all seals which any person is authorized to use by any Act of Parliament or other Act or Regulation having the force of law in British India;

(7) the accession to office, names, titles, functions, and signatures of the persons filling, for the time being, any public office in any part of British India if the fact of their appointment to such office is notified in the *Gazette of India*, or in the official gazette of any Local Government;

(8) the existence, title, and national flag of every State or Sovereign recognized by the British Crown;

(9) the divisions of time, the Geographical divisions of the world, and public festivals, fasts, and holidays notified in the official gazette;

(10) the territories under the dominion of the British Crown;

(11) the commencement, continuance, and termination of hostilities between the British Crown and any other State or body of persons;

(12) the names of the members and officers of the Court, and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all advocates, attorneys, proctors, vakils, pleaders, and other persons authorized by law to appear or act before it;

(13) the rule of the Road "on land or at sea."†

In all these cases,‡ and also on all matters of public history, literature, science, or art, the Court may resort for its aid to appropriate books or documents or reference.

If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so unless and until such person produces any such book or document as it may consider necessary to enable it to do so.

* For lists of such Courts, see the Notifications printed on pp. 372 to 374 of the Western India Volume of the Lists of British Enactments in force in Native States.

† The words quoted in s. 37, para. (13), have been inserted by the Indian Evidence Act (1872) Amendment Act (XVIII. of 1872), s. 5.

‡ For an additional case, see the Code of Civil Procedure (Act V. of 1908) s. 84.

58. No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which, by any rule of pleading in force at the time, they are deemed to have admitted by their pleadings:

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

CHAPTER IV.

OF ORAL EVIDENCE.

Proof of facts by oral evidence.

59. All facts, except the contents of documents, may be proved by oral evidence.

Oral evidence must be direct.

60. Oral evidence must, in all cases whatever, be direct; that is to say,—

if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;

if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it;

if it refers to a fact which could be perceived by any other sense, or in any other manner, it must be the evidence of a witness who says he perceived it by that sense, or in that manner;

if it refers to an opinion, or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds:

Provided that the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatise. if the author is dead, or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable:

Provided, also, that, if oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection.

CHAPTER V.

OF DOCUMENTARY EVIDENCE.

Proof of contents of documents.

61. The contents of documents may be proved either by primary or by secondary evidence.

Primary evidence.

62. Primary evidence means the document itself produced for the inspection of the Court.

Explanation 1.—Where a document is executed in several parts, each part is primary evidence of the document.

Where a document is executed in counterparts, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

Explanation 2.—Where a number of documents are all made by one uniform process, as in the case of printing, lithography, or photography, each is primary evidence of the contents of the rest; but, where they are all copies of a common original, they are not primary evidence of the contents of the original.

Illustration.

A person is shown to have been in possession of a number of placards, all printed at one time from one original. Any one of the placards is primary evidence of the contents of any other, but no one of them is primary evidence of the contents of the original.

Secondary evidence.

63. Secondary evidence means and includes—

- (1) certified copies given under the provisions hereinafter contained ;*
- (2) copies made from the original by mechanical processes, which, in themselves, insure the accuracy of the copy, and copies compared with such copies :
- (3) copies made from, or compared with, the original ;
- (4) counterparts of document as against the parties who did not execute them ;
- (5) oral accounts of the contents of a document given by some person who has himself seen it.

* See s. 76, *infra*.

Illustrations.

(a.) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.

(b.) A copy compared with a copy of a letter made by a copying-machine is secondary evidence of the contents of the letter if it is shown that the copy made by the copying-machine was made from the original.

(c.) A copy transcribed from a copy, but afterwards compared with the original, is secondary evidence, but the copy not so compared is not secondary evidence, of the original, although the copy from which it was transcribed was compared with the original.

(d.) Neither an oral account of a copy compared with the original nor an oral account of a photograph or machine-copy of the original, is secondary evidence of the original.

Proof of documents by primary evidence.

64. Documents must be proved by primary evidence except in the cases hereinafter mentioned.

Cases in which secondary evidence relating to documents may be given.

65. Secondary evidence may be given of the existence, condition, or contents of a document in the following cases :—

- (a) When the original is shown or appears to be in the possession or power—
 - of the person against whom the document is sought to be proved, or
 - of any person out of reach of, or not subject to, the process of the Court, or
 - of any person legally bound to produce it,
 - and when, after the notice mentioned in section 66, such person does not produce it ;
- (b) when the existence, condition, or contents of the original have been proved to be admitted in writing by the person against whom it is proved, or by his representative in interest ;
- (c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time ;
- (d) when the original is of such a nature as not to be easily moveable ;

- (e) when the original is a public document within the meaning of section 74 ;
- (f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in British India, to be given in evidence ;
- (g) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

In cases (a), (c), (d), any secondary evidence of the contents of the document is admissible.

In case (b), the written admission is admissible.

In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible.

In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

66 Secondary evidence of the contents of the documents referred to in section 65, clause (a), shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, "or to his attorney or pleader,"* such notice to produce it as is prescribed by law; and, if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case :

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the Court thinks fit to dispense with it :—

- (1) When the document to be proved is itself a notice ;
- (2) when, from the nature of the case, the adverse party must know that he will be required to produce it ;
- (3) when it appears or is proved that the adverse party has obtained possession of the original by fraud or force ;

* In s. 66, the words quoted have been inserted by Act XVIII. of 1872, s. 6.

- (4) when the adverse party or his agent has the original in Court;
- (5) when the adverse party or his agent has admitted the loss of the document;
- (6) when the person in possession of the document is out of reach of, or not subject to, the process of the Court.

67. If a document is alleged to be signed or to have been written, wholly or in part, by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.

Proof of signature and handwriting of person alleged to have signed or written document produced.

68. If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution if there be an attesting witness alive and subject to the process of the Court, and capable of giving evidence.

Proof of execution of document required by law to be attested.

69. If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.

Proof where no attesting witness found.

70. The admission of a party to an attested document of its execution by himself shall be sufficient proof of its execution as against him, though it be a document required by law to be attested.

Admission or execution by party to attested document.

71. If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence.

Proof when attesting witness denies the execution.

72. An attested document not required by law to be attested may be proved as if it was unattested.

Proof of document not required by law to be attested.

73. In order to ascertain whether a signature, writing, or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person, may be compared with the one which is to be proved although that signature, writing, or seal has not been produced or proved for any other purpose.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

*This section applies also, with any necessary modifications, to finger impressions.**

PUBLIC DOCUMENTS.

74. The following documents are public documents:—

1. Documents forming the Acts, or records of the Acts—
 - (i) of the sovereign authority,
 - (ii) of official bodies and tribunals, and
 - (iii) of public officers, legislative, judicial, and executive, whether of British India, or of any other part of Her Majesty's dominions, or of a foreign country.
2. Public records kept in British India of private documents.

75. All other documents are private.

76. Every public officer having the custody of a public document which any person has a right to inspect shall give that person, on demand, a copy of it, on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed whenever such officer is authorized by law to make use of a seal; and such copies so certified shall be called certified copies.

* In s. 73, the last paragraph in Italics has been added by the Indian Evidence Act (V. of 1899), s. 3 (2).

Explanation.—Any officer who, by the ordinary course of official duty, is authorized to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.

77. Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

Proof of other official documents.

78. The following public documents may be proved as follows:—

(1) Acts, orders, or notifications of the Executive Government of British India in any of its departments, or any Local Government or any department of any Local Government—

by the records of the departments, certified by the heads of those departments respectively,

or by any document purporting to be printed by order of any such Government:

(2) The proceedings of the Legislatures—

by the journals of those bodies respectively, or by published Acts or abstracts, or by copies purporting to be printed by order of Government:

(3) Proclamations, orders, or regulations issued by Her Majesty, or by the Privy Council, or by any department of Her Majesty's Government—

by copies or extracts contained in the *London Gazette*, or purporting to be printed by the Queen's Printer:

(4) The Acts of the Executive or the proceedings of the Legislature of a foreign country—

by journals published by their authority, or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign, or by a recognition thereof in some public Act of the Governor-General of India in Council:

(5) The proceedings of a municipal body in British India—

by a copy of such proceedings certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of such body:

(6) Public documents of any other class in a foreign country—

by the original, or by a copy certified by the legal keeper thereof, with a certificate under the seal of a Notary Public, or of a British Consul or Diplomatic Agent, that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the document according to the law of the foreign country.

PRESUMPTIONS AS TO DOCUMENTS.

79. The Court shall presume every document purporting to be a certificate, certified copy or other documents which is by law declared to be admissible as evidence of any particular fact, and which purports to be duly certified by any officer in British India, or by any officer in any Native State in alliance with Her Majesty, who is duly authorized thereto by the Governor General in Council, to be genuine:

Provided that such document is substantially in the form, and purports to be executed in the manner, directed by law in that behalf.

The Court shall also presume that any officer, by whom any such document purports to be signed or certified, held, when he signed it, the official character which he claims in such paper.

80 Whenever any document is produced before any Court purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding, or before any officer authorized by law to take such evidence, or to be a statement or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume—

that the document is genuine;

that statements as to the circumstances under which it was taken purporting to be made by the person signing it, are true; and that such evidence, statement, or confession, was duly taken.

81. The Court shall presume the genuineness of every document purporting to be the *London Gazette*, or the *Gazette of India*, or the Government Gazette of any Local Government, or of any colony, depen-

Presumption as to gazettes, newspapers, private Acts of Parliament, and other documents.

dency, or possession of the British Crown, or to be a newspaper or journal, or to be a copy of a private Act of Parliament printed by the Queen's Printer, and of every document purporting to be a document directed by any law to be kept by any person, such document is kept substantially in the form required by law, and is produced from proper custody.

82. When any document is produced before any Court, **Presumption as to document admissible in England without proof of seal or signature.** purporting to be a document which, by the law in force for the time being in England or Ireland, would be admissible in proof of any particular in any Court of Justice in England, or Ireland, without proof of the seal or stamp or signature authenticating it, or of the judicial or official character claimed by the person by whom it purports to be signed, the Court shall presume that such seal, stamp, or signature is genuine, and that the person signing it held, at the time when he signed it, the judicial or official character which he claims,

and the document shall be admissible for the same purpose for which it would be admissible in England or Ireland.

83. The Court shall presume that maps or plans purporting to be made by the authority of Government were so made and are accurate; **Presumption as to maps or plans made by authority of Government.** but maps or plans made for the purposes of any cause must be proved to be accurate.

84. The Court shall presume the genuineness of every book purporting to be printed or published under the authority of the Government of any country, and to contain any of the laws of that country, **Presumption as to collections of laws and reports of decisions.**

and of every book purporting to contain reports of decisions of the Courts of such country.

85. The court shall presume that every document purporting to be a power-of-attorney, and to have been executed before, and authenticated by, a Notary Public, or any Court, Judge, Magistrate, British Consul or Vice-Consul, or representative of Her Majesty, or of the Government of India, was so executed and authenticated. **Presumption as to powers-of-attorney.**

86. The Court may presume that any document purporting to be a certified copy of any judicial record of any country not forming part of Her Majesty's dominions is genuine and accurate if the document purports to be certified in any manner which is certified by any representative of Her Majesty, or of the Government of India, "in or for"* such country to be the manner commonly in use in that country for the certification of copies of judicial records.

An officer who, with respect to any territory or place not forming part of Her Majesty's dominions, is a Political Agent therefor, as defined in section 3, clause (40), of the General Clauses Act, 1897, shall, for the purposes of this section, be deemed to be a representative of the Government of India in and for the country comprising that territory or place.†

87. The Court may presume that any book to which it may refer for information on matters of public maps, and charts, or general interest, and that any published map or chart, the statements of which are relevant facts, and which is produced for its inspection, was written and published by the person, and at the time and place, by whom or at which it purports to have been written or published.

88. The Court may presume that a message forwarded from a telegraph office to the person to whom such message purports to be addressed corresponds with a message delivered for transmission at the office from which the message purports to be sent; but the Court shall not make any presumption as to the person by whom such message was delivered for transmission.

89. The Court shall presume that every document called for, and not produced after notice to produce, was attested, stamped, and executed in the manner required by law.

* In s. 86, the words quoted have been substituted for the words "resident in," by the Indian Evidence Act (1872) Amendment Act (III. of 1891), s. 8.

† In s. 86, as amended by s. 8 of the Indian Evidence Act (1872) Amendment Act (III. of 1891), the italicized paragraph has been substituted for the amended paragraph by the Indian Evidence Act (V. of 1899), s. 4.

80. Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.

Explanation.—Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

This explanation applies also to section 81.

Illustrations.

(a) A has been in possession of landed property for a long time. He produces from his custody deeds relating to the land showing his titles to it: The custody is proper.

(b) A produces deeds relating to landed property of which he is the mortgagor. The mortgagor is in possession: The custody is proper.

(c) A, a connection of B produces deeds relating to lands in B's possession, which were deposited with him by B for safe custody: The custody is proper.

CHAPTER VI.

OF THE EXCLUSION OF ORAL BY DOCUMENTARY EVIDENCE.

91. When the terms of a contract, or of a grant, or of any other disposition of property have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence* shall be given in proof of the terms of such contract, grant, or other disposition of property, or of such matter, except the document itself, or secondary evidence of its

* Evidence may, however, be taken where a Criminal Court finds that a confession or other statement of an accused person has not been recorded in manner prescribed.—*See the Code of Criminal Procedure (Act V. of 1898), s. 533.*

contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Exception 1.—When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.

Exception 2.—Wills “admitted to probate in British India”* may be proved by the probate.

Explanation 1.—This section applies equally to cases in which the contracts, grants, or dispositions of property referred to are contained in one document, and to cases in which they are contained in more documents than one.

Explanation 2.—Where there are more originals than one, one original only need be proved.

Explanation 3.—The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

Illustrations.

(a.) If a contract be contained in several letters, all the letters in which it is contained must be proved.

(b.) If a contract is contained in a bill of exchange, the bill of exchange must be proved.

(c.) If a bill of exchange is drawn in a set of three, one only need be proved.

(d.) A contracts in writing with B for the delivery of indigo upon certain terms. The contract mentions the fact that B had paid A the price of other indigo contracted for verbally on another occasion.

Oral evidence is offered that no payment was made for the other indigo :
The evidence is admissible.

(e.) A gives B a receipt for money paid by B.

Oral evidence is offered of the payment.

The evidence is admissible.

92. When the terms of any such contract, grant, or other dis-

Exclusion of evidence of position of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no

* These words in s. 91, *Exception 2*, have been substituted for the words “under the Indian Succession Act” by the Indian Evidence Act Amendment Act (XVIII. of 1872), s. 7.

evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to or subtracting from, its terms :

Proviso 1.—Any facts may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto ; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want *or** failure of consideration, or mistake in fact or law.

Proviso 2.—The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

Proviso 3.—The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant, or disposition of property, may be proved.

Proviso 4.—The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant, or disposition of property may be proved, except in cases in which such contract, grant, or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

Proviso 5.—Any usage or custom, by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved : Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract.

Proviso 6.—Any fact may be proved which shows in what manner the language of a document is related to existing facts.

Illustrations.

(a.) A policy of insurance is effected on goods “ in ships from Calcutta to London.” The goods are shipped in a particular ship which is lost. The fact, that that particular ship was orally excepted from the policy, cannot be proved.

* In s. 92, *Prov. 1*, the italicized word “ or ” has been substituted for the word “ of ” by s. 8 of the Indian Evidence Act (1872) Amendment Act (XVIII. of 1872).

(b.) A agrees absolutely in writing to pay B Rs. 1,000 on the first March 1873. The fact, that, at the same time an oral agreement was made that the money should not be paid till the thirty first March, cannot be proved.

(c.) An estate called "the Rampur Tea Estate" is sold by a deed which contains a map of the property sold. The fact, that land not included in the map had always been regarded as part of the estate, and was meant to pass by the deed, cannot be proved.

(d.) A enters into a written contract with B to work certain mines, the property of B, upon certain terms. A was induced to do so by a misrepresentation of B's as to their value: This fact may be proved.

(e.) A institutes a suit against B for the specific performance of a contract, and also prays that the contract may be reformed as to one of its provisions, as that provision was inserted in it by mistake: A may prove that such a mistake was made as would by law entitle him to have the contract reformed.

(f.) A orders goods of B by a letter in which nothing is said as to the time of payment, and accepts the goods on delivery. B sues A for the price: A may show that the goods were supplied on credit for a term still unexpired.

(g.) A sells B a horse, and verbally warrants him sound. A gives B a paper in these words—"Bought of A a horse for Rs. 500:" B may prove the verbal warranty.

(h.) A hires lodgings of B, and gives B a card on which is written—Rooms, Rs. 200 a month. A may prove a verbal agreement that these terms were to include partial board.

A hires lodgings of B for a year, and a regularly-stamped agreement, drawn up by an attorney, is made between them. It is silent on the subject of board: A may not prove that board was included in the terms verbally.

(i.) A applies to B for a debt due to A by sending a receipt for the money. B keeps the receipt, and does not send the money: In a suit for the amount, A may prove this.

(j.) A and B make a contract in writing to take effect upon the happening of a certain contingency. The writing is left with B, who sues A upon it: A may show the circumstances under which it was delivered.

93. When the language used in a document is, on its face, ambiguous or defective, evidence may explain or amend ambiguous document. Evidence may not be given of facts which would show its meaning, or supply its defects.

Illustrations.

(a.) A agrees, in writing, to sell a horse to B for "Rs. 1,000 or Rs 1,500:"

Evidence cannot be given to show which price was to be given.

(b.) A deed contains blanks: Evidence cannot be given of facts which would show how they were meant to be filled.

94. When language used in a document is plain in itself, and when it applies accurately to existing facts, evidence may not be given to show that it was not meant to apply to such facts.

Exclusion of evidence against application of document to existing facts.

Illustration.

A sells to B, by deed, "my estate at Rampur containing 100 bighas." A has an estate at Rampur containing 100 bighas: Evidence may not be given of the fact that the estate meant to be sold was one situated at a different place, and of a different size.

95. When language used in a document is plain in itself, but is unmeaning in reference to existing facts, evidence may be given to show that it was used in a peculiar sense.

Evidence as to document unmeaning in reference to existing facts.

Illustration.

A sells to B, by deed, "my house in Calcutta."

A had no house in Calcutta, but it appears that he had a house at Howrah, of which B had been in possession since the execution of the deed:

These facts may be proved to show that the deed related to the house at Howrah.

96. When the facts are such that the language used might have been meant to apply to any one, and could not have been meant to apply to more than one, of several persons or things, evidence may be given of facts which show which of those persons or things it was intended to apply to.

Evidence as to application of language which can apply to one only of several persons.

Illustrations.

(a.) A agrees to sell to B, for Rs. 1,000, "my white horse." A has two white horses: Evidence may be given of facts which show which of them was meant.

(b.) A agrees to accompany B to Haidrabad: Evidence may be given of facts showing whether Haidrabad in the Deccan or Haidrabad in Sindh was meant.

97. When the language used applies partly to one set of existing facts and partly to another set of existing facts, but the whole of it does not apply correctly to either, evidence may be given to show to which of the two it was meant to apply.

Evidence as to application of language to one of two sets of facts, to neither of which the whole correctly applies.

Illustration.

A agrees to sell to B "my land at X in the occupation of Y." A has land at X, but not in the occupation of Y; and he has land in the occupation of Y, but it is not at X: Evidence may be given of facts showing which he meant to sell.

98. Evidence may be given to show the meaning of illegible Evidence as to meaning of or not commonly intelligible characters illegible character, &c. of foreign, obsolete, technical, local. and provincial expressions of abbreviations, and of words used in a peculiar sense.

Illustration.

A, a sculptor, agrees to sell to B 'all my mods.' A has both models and modelling tools: Evidence may be given to show which he meant to sell.

99. Persons, who are not parties to a document or their Who may give evidence of agreement varying terms of document. representatives in interest, may give evidence of any facts tending to show a contemporaneous agreement varying the terms of the document.

Illustration.

A and B make a contract in writing that B shall sell A certain cotton to be paid for on delivery. At the same time they make an oral agreement that three months' credit shall be given to A: This could not be shown as between A and B, but it might be shown by C if it affected his interests.

100. Nothing in this chapter contained shall be taken to Saving of provisions of Indian Succession Act relating to wills. affect any of the provisions of the Indian Succession Act (X. of 1865) as to the construction of wills.

PART III.—PRODUCTION AND EFFECT OF EVIDENCE.

CHAPTER VII.—OF THE BURDEN OF PROOF.

101. Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

Burden of proof.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Illustrations.

(a.) A desires a Court to give judgment that B shall be punished for a crime which A says B has committed :

A must prove that B has committed the crime.

(b.) A desires a Court to give judgment that he is entitled to certain land in the possession of B by reason of facts which he asserts, and which B denies, to be true :

A must prove the existence of those facts.

102. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

Illustrations.

(a.) A sues B for land of which B is in possession, and which, as A asserts, was left to A by the will of C, B's father.

If no evidence were given on either side, B would be entitled to retain his possession :

Therefore the burden of proof is on A.

(b) A sues B for money due on a bond.

The execution of the bond is admitted, but B says that it was obtained by fraud, which A denies.

If no evidence were given on either side, A would succeed, as the bond is not disputed, and the fraud is not proved :

Therefore the burden of proof is on B.

103. The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence unless it is provided by any law that the proof of that fact shall lie on any particular person.

Illustration.

A prosecutes B for theft, and wishes the Court to believe that B admitted the theft to C : A must prove the admission.

B wishes the Court to believe that, at the time in question, he was elsewhere : He must prove it.

104. The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence.

Burden of proving fact to be proved to make evidence admissible.

Illustrations.

(a.) A wishes to prove a dying declaration by B : A must prove B's death.

(b.) A wishes to prove, by secondary evidence, the contents of a lost document :

A must prove that the document has been lost.

105. When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the Indian Penal Code, or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.

Illustrations.

(a.) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act :

The burden of proof is on A.

(b.) A, accused of murder, alleges that, by grave and sudden provocation, he was deprived of the power of self-control :

The burden of proof is on A.

(c.) Section 325 of the Indian Penal Code provides that, whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be subject to certain punishments.

A is charged with voluntarily causing grievous hurt under section 325 :

The burden of proving the circumstances bringing the case under section 335 lies on A.

106. When any fact is specially within the knowledge of any person, the burden of proving that fact is upon him.

Illustrations.

(a.) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b.) A is charged with travelling on a railway without a ticket : The burden of proving that he had a ticket is on him.

107. When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.

108. "Provided that,"* when the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is *shifted to*† the person who affirms it.

109. When the question is, whether persons are partners, landlord and tenant, or principal and agent, and it has been shown that they have been acting as such, the burden of proving that they do not stand, or have ceased to stand, to each other in those relationships, respectively, is on the person who affirms it.

110. When the question is, whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.

111. Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.

Illustrations.

(a.) The good faith of a sale by a client to an attorney is in question in a suit brought by the client : The burden of proving the good faith of the transaction is on the attorney.

(b.) The good faith of a sale by a son just come of age to a father is in question in a suit brought by the son : The burden of proving the good faith of the transaction is on the father.

112. The fact, that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining

* In s. 108, the words quoted have been inserted by s. 9, Act XVIII. 1872.

† In s. 108, the italicised words have been substituted for the word "on," by s. 9, Act XVIII., 1872.

unmarried, shall be conclusive proof that he is the legitimate son of that man unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.

113- A notification in the *Gazette of India* that any portion of British territory has been ceded to any Native State, Prince, or Ruler,* shall be conclusive proof that a valid cession of such territory took place at the date mentioned in such notification.

114. The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case.

Illustrations.

The Court may presume—

(a.) that a man who is in possession of stolen goods soon after the theft is either the thief, or has received the goods knowing them to be stolen, unless he can account for his possession ;

(b.) that an accomplice is unworthy of credit unless he is corroborated in material particulars ;

(c.) that a bill of exchange, accepted or endorsed, was accepted or endorsed for good consideration ;

(d.) that a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or state of things usually cease to exist, is still in existence ;

(e.) that judicial and official acts have been regularly performed ;

(f.) that the common course of business has been followed in particular cases ;

(g.) that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it ;

(h.) that, if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him ;

(i.) that, when a document creating an obligation is in the hands of the obligor, the obligation has been discharged.

But the Court shall also have regard to such facts as the following in considering whether such maxims do or do not apply to the particular case before it—

* See, for example, *Gazette of India*, Jan. 4, 1873, Pt. I., p. 2.

as to illustration (a.)—a shopkeeper has in his till a marked rupee soon after it was stolen, and cannot account for its possession specifically, but is continually receiving rupees in the course of his business ;

as to illustration (b.)—A, a person of the highest character, is tried for causing a man's death by an act of negligence in arranging certain machinery. B, a person of equally good character, who also took part in the arrangement, describes precisely what was done, and admits and explains the common carelessness of A and himself ;

as to illustration (b.)—a crime is committed by several persons : A, B, and C, three of the criminals, are captured on the spot, and kept apart from each other. Each gives an account of the crime implicating D, and the accounts corroborate each other in such a manner as to render previous concert highly improbable ;

as to illustration (c.)—A, the drawer of a bill of exchange, was a man of business. B, the acceptor, was a young and ignorant person, completely under A's influence ;

as to illustration (d.)—it is proved that a river ran in a certain course five years ago, but it is known that there have been floods since that time which might change its course ;

as to illustration (e.)—a judicial act, the regularity of which is in question, was performed under exceptional circumstances ;

as to illustration (f.)—the question is, whether a letter was received, it is shown to have been posted, but the usual course of the post was interrupted by disturbances ;

as to illustration (g.)—a man refuses to produce a document which would bear on a contract of small importance on which he is sued, but which might also injure the feelings and reputation of his family ;

as to illustration (h.)—a man refuses to answer a question which he is not compelled by law to answer, but the answer to it might cause loss to him in matters unconnected with the matter in relation to which it is asked ;

as to illustration (i.)—a bond is in possession of the obligor, but the circumstances of the case are such that he may have stolen it.

CHAPTER VIII.—ESTOPPEL.

115. When one person has, by his declaration, act, or omission, intentionally caused or permitted another person to believe a thing to be true, and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

Illustration.

A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it.

The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale, he had no title: He must not be allowed to prove his want of title.

116. No tenant of immoveable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immoveable property; and no person and of license of person in who came upon any immoveable possession. property by the license of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such license was given.

117. No acceptor of a bill of exchange shall be permitted to deny that the drawer had authority to draw such bill, or to endorse it; nor shall Estoppel of acceptor of bill of exchange, bailee, or licensee. any bailee or licensee be permitted to deny that his bailor or licensor had, at the time when the bailment or license commenced, authority to make such bailment, or grant such license.

Explanation 1.—The acceptor of a bill of exchange may deny that the bill was really drawn by the person by whom it purports to have been drawn.

Explanation 2.—If a bailee delivers the goods bailed to a person other than the bailor, he may prove that such person had a right to them as against the bailor.

CHAPTER IX.—OF WITNESSES.

118. All persons shall be competent to testify unless the Court considers that they are prevented from understanding the question put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.

Explanation.—A lunatic is not incompetent to testify unless he is prevented by his lunacy from understanding the questions put to him, and giving rational answers to them.

119. A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing, or by sign; but such writing must be written, and the signs made, in open Court. Evidence so given shall be deemed to be oral evidence.

Dumb witnesses.

120. In all civil proceedings, the parties to the suit, and the husband or wife of any party to the suit, shall be competent witnesses. In criminal proceedings against any person, the husband or wife of such person, respectively, shall be a competent witness.

Parties to civil suit and their wives or husbands.

Husband or wife of person under criminal trial.

121. No Judge or Magistrate shall, except upon the special order of some Court to which he is subordinate, be compelled to answer any questions as to his own conduct in Court as such Judge or Magistrate, or as to anything which came to his knowledge in Court as such Judge or Magistrate; but he may be examined as to other matters which occurred in his presence whilst he was so acting.

Judges and Magistrates.

Illustrations.

(a.) A, on his trial before the Court of Session, says that a deposition was improperly taken by B, the Magistrate: B cannot be compelled to answer questions as to this, except upon the special order of a superior Court.

(b.) A is accused before the Court of Session of having given false evidence before B, a Magistrate: B cannot be asked what A said except upon the special order of the superior Court.

(c.) A is accused before the Court of Session of attempting to murder a police-officer whilst on his trial before B, a Sessions Judge: B may be examined as to what occurred.

122. No person who is or has been married shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married; nor shall he be permitted to disclose any such communication, unless the person who made it or his representative in interest consents except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other.

Communications during marriage.

123. No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State except with the permission of the officer at the head of the Department concerned, who shall give or withhold such permission as he thinks fit.

124. No public officer shall be compelled to disclose communications made to him in official confidence when he considers that the public interests would suffer by the disclosure.

125.* No Magistrate or police-officer† shall be compelled to say whence he got any information as to the commission of any offence, and no revenue-officer shall be compelled to say whence he got any information as to the commission of any offence against the public revenue.

Explanation.—"Revenue-officer" in this section means any officer employed in or about the business of any branch of the public revenue.

126. No barrister, attorney, pleader, or vakil shall, at any time, be permitted, unless with his client's express consent, to disclose any communication made to him in the course, and for the purpose, of his employment as such barrister, pleader, attorney, or vakil, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course, and for the purpose, of his professional employment, or to disclose any advice given by him to his client in the course, and for the purpose, of such employment:

Provided that nothing in this section shall protect from disclosure—

(1) any such communication made in furtherance of any illegal‡ purpose;

* Substituted, by Act III. of 1887, for the section originally enacted.

† All the privileges which a police-officer has under s. 125 of this Act have been conferred on a Commandant or Second in Command of Military Police in Burma.—See the Burma Military Police Act (XV. of 1887), s. 13.

‡ The word "illegal" has been substituted for the word "criminal" by the Indian Evidence Act Amendment Act (XVIII. of 1872), s. 10.

(2) any fact observed by any barrister, pleader, attorney, or vakil in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment.

It is immaterial whether the attention of such barrister, pleader,* attorney, or vakil was or was not directed to such fact by or on behalf of his client.

Explanation.—The obligation stated in this section continues after the employment has ceased.

Illustrations.

(a.) A, a client, says to B, an attorney, "I have committed forgery, and I wish you to defend me :"

As the defence of a man known to be guilty is not a criminal purpose, this communication is protected from disclosure.

(b.) A, a client, says to B, an attorney, "I wish to obtain possession of property by the use of a forged deed on which I request you to sue :"

This communication, being made in furtherance of a criminal purpose, is not protected from disclosure.

(c.) A being charged with embezzlement, retains B, an attorney, to defend him. In the course of the proceedings, B observes that an entry has been made in A's account-book, charging A with the sum said to have been embezzled, which entry was not in the book at the commencement of his employment :

This being a fact observed by B in the course of his employment, showing that a fraud has been committed since the commencement of the proceedings, it is not protected from disclosure.

127. The provisions of section 126 shall apply to interpreters, and the clerks or servants of barristers, pleaders, attorneys, and vakils.

128. If any party to a suit gives evidence therein at his own instance or otherwise, he shall not be deemed to have consented thereby to such disclosure as is mentioned in section 126; and, if any party to a suit or proceeding calls any such barrister, pleader,* attorney, or vakil as a witness, he shall be deemed to have consented to such disclosure only if he questions such barrister, pleader,*

* In ss. 126 and 128, the word "pleader," wherever it occurs, has been inserted by the Indian Evidence Act (1872) Amendment Act (XVIII. of 1872), s. 10.

attorney, or vakil on matters which, but for such question, he would not be at liberty to disclose.

129. No one shall be compelled to disclose to the Court Confidential communications with legal advisers. any confidential communication which has taken place between him and his legal professional adviser unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the Court necessary to be known in order to explain any evidence which he has given, but no others.

130. No witness who is not a party to a suit shall be compelled to produce his title-deeds to any property, or any document in virtue of which he holds any property as pledgee or mortgagee, or any document the production of which might tend to criminate him, unless he has agreed in writing to produce them with the person seeking the production of such deeds, or some person through whom he claims.

131. No one shall be compelled to produce documents in his possession which any other person would be entitled to refuse to produce if they were in his possession unless such last mentioned person consents to their production.

132. A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit, or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend, directly or indirectly, to criminate, such witness, or that it will expose, or tend, directly or indirectly, to expose, such witness to a penalty or forfeiture of any kind:

Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer.

133. An accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

134. No particular number of witnesses shall, in any case, be required for the proof of any fact.

Number of witnesses.

CHAPTER X.—OF THE EXAMINATION OF WITNESSES.

135. The order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively, and, in the absence of any such law, by the discretion of the Court.

Order of production and examination of witnesses.

136. When either party proposes to give evidence of any fact, the Judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant; and the Judge shall admit the evidence if he thinks that the fact, if proved, would be relevant, and not otherwise.

Judge to decide as to admissibility of evidence.

If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last-mentioned fact must be proved before evidence is given of the fact first mentioned unless the party undertakes to give proof of such fact, and the Court is satisfied with such undertaking.

If the relevancy of one alleged fact depends upon another alleged fact being first proved, the Judge may, in his discretion, either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

Illustrations.

(a.) It is proposed to prove a statement about a relevant fact by a person alleged to be dead, which statement is relevant under s. 32 :

The fact, that the person is dead, must be proved by the person proposing to prove the statement before evidence is given of the statement.

(b.) It is proposed to prove, by a copy, the contents of a document said to be lost :

The fact, that the original is lost, must be proved, by the person proposing to produce the copy, before the copy is produced.

(c.) A is accused of receiving stolen property knowing it to have been stolen :

It is proposed to prove[that he denied the possession of the property.

The relevancy of the denial depends on the identity of the property. The Court may, in its discretion, either require the property to be identified before the denial of the possession is proved, or permit the denial of the possession to be proved before the property is identified.

(d.) It is proposed to prove a fact (A) which is said to have been the cause or effect of a fact in issue. There are several intermediate facts (B, C, and D), which must be shown to exist before the fact (A) can be regarded as the cause or effect of the fact in issue; The Court may either permit A to be proved before B, C, or D is proved, or may require proof of B, C, and D before permitting proof of A.

137. The examination of a witness by the party who calls him shall be called his examination-in-chief.

Cross-examination. The examination of a witness by the adverse party shall be called his cross-examination.

Re-examination. The examination of a witness, subsequent to the cross-examination, by the party who called him, shall be called his re-examination.

138. Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.

Order of examinations.

Direction of re-examination.

The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

The re-examination shall be directed to the explanation of matters referred to in cross-examination; and, if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter.

139. A person summoned to produce a document does not become a witness by the mere fact that he produces it, and cannot be cross-examined unless and until he is called as a witness.

Cross-examination of person called to produce a document.

Witnesses to character.

140. Witnesses to character may be cross-examined and re-examined.

141. Any question suggesting the answer which the person putting it wishes or expects to receive is called a leading question.

Leading questions.

142. Leading questions must not, if objected to by the adverse party, be asked in an examination-in-chief, or in a re-examination, except with the permission of the Court.

When they must not be asked.

The Court shall permit leading questions as to matters which are introductory or undisputed, or which have, in its opinion, been already sufficiently proved.

143. Leading questions may be asked in cross-examination.

When they may be asked.

144. Any witness may be asked, whilst under examination, whether any contract, grant, or other disposition of property as to which he is giving evidence, was not contained in a document; and, if he says that it was, or if he is about to make any statement as to the contents of any document, which, in the opinion of the Court, ought to be produced, the adverse party may object to such evidence being given until such document is produced, or until facts have been proved which entitle the party who called the witness to give secondary evidence of it.

Evidence as to matters in writing.

Explanation.—A witness may give oral evidence of statements made by other persons about the contents of documents if such statements are in themselves relevant facts.

Illustration.

The question is, whether A assaulted B.

C deposes that he heard A say to D, "B wrote a letter accusing me of theft, and I will be revenged on him." This statement is relevant as showing A's motive for the assault, and evidence may be given of it, though no other evidence is given about the letter.

145. A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing,* his attention must, before the writing

Cross-examination as to previous statements in writing.

* This applies to police-diaries.—See s. 172, Act V. of 1898.

can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

146. When a witness is cross-examined, he may, in addition to the questions hercinbefore referred to, be asked any questions which tend—
Questions lawful in cross-examination.

(1) to test his veracity;

(2) to discover who he is, and what is his position in life, or

(3) to shake his credit by injuring his character, although the answer to such questions might tend, directly or indirectly, to criminate him, or might expose, or tend, directly or indirectly, to expose, him to a penalty or forfeiture.

147. If any such question relates to a matter relevant to the suit or proceeding, the provisions of section 132 shall apply thereto.
When witness to be compelled to answer.

148. If any such question relates to a matter not relevant to the suit or proceeding except in so far as it affects the credit of the witness by injuring his character, the Court shall decide whether or not the witness shall be compelled to answer it, and may, if it thinks fit, warn the witness that he is not obliged to answer it. In exercising its discretion, the Court shall have regard to the following considerations:—
Court to decide when question shall be asked, and when witness compelled to answer.

(1) Such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the Court as to the credibility of the witness on the matter to which he testifies :

(2) Such questions are improper if the imputation which they convey relates to matter so remote in time, or of such a character, that the truth of the imputation would not affect, or would affect in a slight degree, the opinion of the Court as to the credibility of the witness on the matter to which he testifies :

(3) Such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence :

(4) The Court may, if it sees fit, draw, from the witness's refusal to answer, the inference that the answer, if given, would be unfavourable.

149. No such question as is referred to in section 148 ought to be asked unless the person asking, without reasonable ground, it has reasonable grounds for thinking that the imputation which it conveys is well-founded.

Illustrations.

(a.) A barrister is instructed by an attorney or vakil that an important witness is a dakait: This is a reasonable ground for asking the witness whether he is a dakait.

(b.) A pleader is informed by a person in Court that an important witness is a dakait. The informant, on being questioned by the pleader, gives satisfactory reasons for his statement: This is a reasonable ground for asking the witness whether he is a dakait.

(c.) A witness, of whom nothing whatever is known, is asked at random whether he is a dakait: There are here no reasonable grounds for the question.

(d.) A witness, of whom nothing whatever is known, being questioned as to his mode of life and means of living, gives unsatisfactory answers: This may be a reasonable ground for asking him if he is a dakait.

150. If the Court is of opinion that any such question was asked without reasonable grounds, it may, if it was asked by any barrister, pleader, vakil, or attorney, report the circumstances of the case to the High Court or other authority to which such barrister, pleader, vakil, or attorney is subject in the exercise of his profession.

151. The Court may forbid any questions or inquiries which it regards as indecent or scandalous although such questions or inquiries may have some bearing on the questions before the Court unless they relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed.

152. The Court shall forbid any question which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the Court needlessly offensive in form.

153. When a witness has been asked, and has answered, any question which is relevant to the inquiry only in so far as it tends to shake his credit by injuring his character, Exclusion of evidence to contradict answers to questions testing veracity.

no evidence shall be given to contradict him ; but, if he answers falsely, he may afterwards be charged with giving false evidence.

Exception 1.—If a witness is asked whether he has been previously convicted of any crime, and denies it, evidence may be given of his previous conviction.

Exception 2.—If a witness is asked any question tending to impeach his impartiality, and answers it by denying the facts suggested, he may be contradicted.

Illustrations.

(a.) A claim against an underwriter is resisted on the ground of fraud.

The claimant is asked whether, in a former transaction, he had not made a fraudulent claim. He denies it.

Evidence is offered to show that he did make such a claim :

The evidence is inadmissible.

(b.) A witness is asked whether he was not dismissed from a situation for dishonesty. He denies it.

Evidence is offered to show that he was dismissed for dishonesty :

The evidence is not admissible.

(c.) A affirms that on a certain day he saw B at Lahore.

A is asked whether he himself was not on that day at Calcutta. He denies it.

Evidence is offered to show that A was on that day at Calcutta :

The evidence is admissible, not as contradicting A on a fact which affects his credit, but as contradicting the alleged fact that B was seen on the day in question in Lahore.

In each of these cases, the witness might, if his denial was false, be charged with giving false evidence.

(d.) A is asked whether his family has not had a blood feud with the family of B against whom he gives evidence.

He denies it : He may be contradicted on the ground that the question tends to impeach his impartiality.

154. The Court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party.

155. The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him :—

Impeaching credit of witness.

(1) by the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit;

(2) by proof that the witness has been bribed, or has accepted* the offer of a bribe, or has received any other corrupt inducement to give his evidence;

(3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;

(4) when a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character.

Explanation.—A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief, but he may be asked his reasons in cross-examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with giving false evidence.

Illustrations.

(a.) A sues B for the price of goods sold and delivered to B. C says that he delivered the goods to B.

Evidence is offered to show that, on a previous occasion, he said that he had not delivered the goods to B :

The evidence is admissible.

(b) A is indicted for the murder of B.

C says that B, when dying, declared that A had given B the wound of which he died

Evidence is offered to show that, on a previous occasion, C said that the wound was not given by A, or in his presence :

The evidence is admissible.

156. When a witness, whom it is intended to corroborate, gives evidence of any relevant fact, he may be questioned as to any other circumstances which he observed at or near to the time or place at which such relevant fact occurred if the Court is of opinion that such circumstances, if proved, would corroborate the testimony of the witness as to the relevant fact which he testifies.

* The word "accepted" has been substituted for the word "had" by Act XVIII. of 1872, s. 11.

Illustration.

A, an accomplice, gives an account of a robbery in which he took part. He describes various incidents unconnected with the robbery which occurred on his way to and from the place where it was committed :

Independent evidence of these facts may be given in order to corroborate his evidence as to the robbery itself.

157. In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.

Former statements of witness may be proved to corroborate later testimony as to same fact.

158. Whenever any statement relevant under section 32 or 33 is proved, all matters may be proved, either in order to contradict or to corroborate it, or in order to impeach or confirm the credit of the person by whom it was made, which might have been proved if that person had been called as a witness, and had denied upon cross-examination the truth of the matter suggested.

159. A witness may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory.

Refreshing memory.

The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid, if, when he read it, he knew it to be correct.

Whenever a witness may refresh his memory by reference to any document, he may, with the permission of the Court, refer to a copy of such document : Provided the Court be satisfied that there is sufficient reason for the non-production of the original.

When witness may use copy of document to refresh memory.

An expert may refresh his memory by reference to professional treatises.

160. A witness may also testify to facts mentioned in any such document as is mentioned in section 159 although he has no specific recollection of the facts themselves if he is sure that the facts were correctly recorded in the document.

Testimony to facts stated in document mentioned in section 159.

Illustration.

A book-keeper may testify to facts recorded by him in books regularly kept in the course of business if he knows that the books were correctly kept, although he has forgotten the particular transactions entered.

161.* Any writing referred to under the provisions of the two last-preceding sections must be produced and shown to the adverse party if he requires it; such party may, if he pleases, cross-examine the witness thereupon.

Right of adverse party as to writing used to refresh memory.

162. A witness summoned to produce a document shall, if it is in his possession or power, bring it to Court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the Court.

Production of documents.

The Court, if it sees fit, may inspect the document unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility.

If, for such a purpose, it is necessary to cause any document to be translated, the Court may, if it thinks fit, direct the translator to keep the contents secret unless the document is to be given in evidence: and, if the interpreter disobeys such direction, he shall be held to have committed an offence under section 166 of the Indian Penal Code.

Translation of documents.

163. When a party calls for a document which he has given the other party notice to produce, and such document is produced and inspected by the party calling for its production, he is bound to give it as evidence if the party producing it requires him to do so.

Giving, as evidence, of document called for and produced on notice.

164. When a party refuses to produce a document which he has had notice to produce, he cannot afterwards use the document as evidence without the consent of the other party, or the order of the Court.

Using, as evidence, of document, production of which was refused on notice.

* As to the application of s. 161 to police-diaries, see the Code of Criminal Procedure (Act V. of 1898), s. 172.

Illustration.

A sues B on an agreement, and gives B notice to produce it. At the trial, A calls for the document, and B refuses to produce it. A gives secondary evidence of its contents. B seeks to produce the document itself to contradict the secondary evidence given by A, or in order to show that the agreement is not stamped : He cannot do so.

165. The Judge may, in order to discover, or to obtain proper proof of, relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant ; any may order the production of any document or thing ; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, not, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question :

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved :

Provided, also, that this section shall not authorize any Judge to compel any witness to answer any question, or to produce any document, which such witness would be entitled to refuse to answer or produce under sections 121 to 131, both inclusive, if the question were asked, or the document were called for, by the adverse party ; nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149 ; nor shall he dispense with primary evidence of any document except in the cases hereinbefore excepted.

166. In cases tried by jury or with assessors, the jury or assessors may put any questions to the witnesses, through or by leave of the Judge, which the Judge himself might put, and which he considers proper.

CHAPTER XI.—OF IMPROPER ADMISSION AND REJECTION OF EVIDENCE.

167. The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case if it shall appear to the Court before

No new trial for improper admission or rejection of evidence.

which such objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

SCHEDULE.

ENACTMENTS REPEALED.

(See section 2.)

Number and year.	Title.	Extent of repeal.
Stat. 26 Geo. III., cap. 57.	For the further regulation of the trial of persons accused of certain offences committed in the East Indies ; for repealing so much of an Act made in the twenty-fourth year of the reign of His present Majesty (entitled "An Act for the Better Regulation and Management of the Affairs of the East India Company, and of the British Possessions in India, and for establishing a Court of Judicature for the more Speedy and Effectual Trial of Persons accused of Offences committed in the East Indies"), as requires the servants of the East India Company, to deliver inventories of their estates and effects ; for rendering the laws more effectual against persons unlawfully resorting to the East Indies ; and for the more easy proof, in certain cases, of deeds and writings executed in Great Britain or India.	Section 38, so far as it relates to Courts of Justice in the East Indies.
Stat. 14 & 15 Vict., cap. 99.	To amend the Law of Evidence.	Section 11, and so much of section 19 as relates to British India.

SCHEDULE—(contd.).
ENACTMENTS REPEALED—(contd.).
(See section 2.)

Number and year.	Title.	Extent of repeal.
Act XV. of 1852.	To amend the Law of Evidence.	So much as has not been heretofore repealed.
Act XIX. of 1853.	To amend the Law of Evidence in the Civil Courts of the East India Company in the Bengal Presidency.	Section 19.
Act II. of 1855.	For the further improvement of the Law of Evidence.	So much as has not been heretofore repealed.
Act XXV. of 1861.	For simplifying the procedure of the Courts of Criminal Judicature not established by Royal Charter.	Section 237.
* * * *	* * * *	* * * *

* The entry relating to ss. 7 and 8 of the General Clauses Act (I. of 1868) has been repealed by the General Clauses Act (X. of 1897).

ACT NO. XVIII. OF 1891.

The Bankers' Books Evidence Act, 1891.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received His Excellency's Assent on the 1st October 1891.)

An Act to amend the Law of Evidence with respect to Bankers' Books.

WHEREAS it is expedient to amend the Law of Evidence with respect to Bankers' Books; It is hereby enacted as follows:—

Title, extent, and commencement.

1. (1) This Act may be called "The Bankers' Books Evidence Act, 1891."

(2) It extends to the whole of British India; and

(3) It shall come into force at once.

Definitions.

2. In this Act, unless there is something repugnant in the subject or context,—

(1)* "Company" means a company registered under any of the enactments relating to companies for the time being in force in the United Kingdom or any of the Colonies or Dependencies thereof, or in British India, or incorporated by An Act of Parliament or of the Governor-General in Council, or by Royal Charter or Letters Patent.

(2) "bank" and "banker" mean—

(a) any company carrying on the business of bankers;

(b) any partnership or individual to whose books the provisions of this Act shall have been extended as hereinafter provided;

(c)† any Post Office Savings Bank or Money-order Office:

(3) "bankers' books" include ledgers, day-books, cash-books, account-books, and all other books used in the ordinary business of a bank:

* The definition of "company" has been substituted for the original one by the Bankers' Books Evidence Act (XII. of 1900), s. 2.

† To sub-s. (2) of s. 2, cl. (c) has been added by s. 2 of the Bankers' Books Evidence Act (I. of 1893).

(4) "legal proceeding" means any proceeding or inquiry in which evidence is or may be given, and includes an arbitration :

(5) "the Court" means the person or persons before whom a legal proceeding is held or taken :

(6) "Judge" means a Judge of a High Court :

(7) "trial" means any hearing before the Court at which evidence is taken ; and

(8) "certified copy" means a copy of any entry in the books of a bank, together with a certificate written at the foot of such copy that it is a true copy of such entry ; that such entry is contained in one of the ordinary books of the bank, and was made in the usual and ordinary course of business ; and that such book is still in the custody of the bank, such certificate being dated and subscribed by the principal accountant or manager of the bank with his name and official title.

3. The Local Government may, from time to time, by notification in the official Gazette, extend the provisions of this Act to the books of any partnership or individual carrying on the business of bankers within the territories under its administration, and keeping a set of not less than three ordinary account-books, namely, a cash-book, a day-book or journal, and a ledger, and may, in like manner, rescind any such notification.

4. Subject to the provisions of this Act, a certified copy of any entry in a banker's book shall in all legal proceedings, be received as *prima-facie* evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions, and accounts therein recorded in every case where, and to the same extent as, the original entry itself is now by law admissible, but not further or otherwise.

5. No officer of a bank shall, in any legal proceeding to which the bank is not a party, be compellable to produce any banker's book the contents of which can be proved under this Act, or to appear as a witness to prove the matters, transactions, and accounts therein recorded unless by order of the Court or a Judge made for special cause.

6. (1) On the application of any party to a legal proceeding, the Court or a Judge may order that such party be at liberty to inspect and

take copy of any entries in a banker's book for any of the purposes of such proceeding, or may order the bank to prepare and produce, within a time to be specified in the order, certified copies of all such entries, accompanied by a further certificate that no other entries are to be found in the books of the bank relevant to the matters in issue in such proceeding, and such further certificate shall be dated and subscribed in manner hereinbefore directed in reference to certified copies.

(2) An order under this or the preceding section may be made either with or without summoning the bank, and shall be served on the bank three clear days (exclusive of bank holidays) before the same is to be obeyed unless the Court or Judge shall otherwise direct.

(3) The bank may, at any time before the time limited for obedience to any such order as aforesaid, either offer to produce their books at the trial, or give notice of their intention to show cause against such order, and thereupon the same shall not be enforced without further order.

7. (1) The costs of any application to the Court or a Judge under or for the purposes of this Act, and the costs of anything done or to be done under an order of the Court or a Judge made under or for the purposes of this Act, shall be in the discretion of the Court or Judge, who may further order such costs or any part thereof to be paid to any party by the bank if they have been incurred in consequence of any fault or improper delay on the part of the bank.

(2) Any order made under this section for the payment of costs to or by a bank may be enforced as if the bank were a party to the proceeding.

(3) Any order under this section awarding costs may, on application to any Court of Civil Judicature designated in the order, be executed by such Court as if the order were a decree for money passed by itself:

Provided that nothing in this sub-section shall be construed to derogate from any power which the Court or Judge making the order may possess for the enforcement of its or his directions with respect to the payment of costs.

ACT NO. I. OF 1893 :*

The Bankers' Books Evidence Act, 1893.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received His Excellency's Assent on the 20th January 1893.)

An Act to extend the Provisions of the Bankers' Books Evidence Act, 1891,† to the Books of Post Office Savings Banks and Money Order Offices.

WHEREAS it is expedient to extend the provisions of the Bankers' Books Evidence Act, 1891,† to the books of the Savings Banks and Money Order Offices of the Post Office; It is hereby enacted as follows :—

Short title and commencement. 1. (1) This Act may be called "The Bankers' Books Evidence Act, 1893;" and

(2) It shall come into force at once.

Addition to definition of "bank" and "banker" in section 2, subsection (2), of Act XVIII. of 1891. 2. After clause (b) of sub-section (2) of section 2 of the said Bankers' Books Evidence Act, 1891,† the following clause shall be added, namely :—

[*Vide supra*, p. 77.]

* For Statement of Objects and Reasons, see *Gazette of India*, 1893, Pt. V., p. 15; for Proceedings in Council, see *ibid* Pt. VI, pp. 12 and 27.

Act I. of 1893 has been extended to the Santhal Parganas --See *Gazette of India*, 1895, Pt. I., p. 541.

† Act XVIII. of 1891.—See p. 77, *Supra*.

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